

TUESDAY, MARCH 20, 1979



highlights

MOTHER'S DAY

Presidential proclamation 16881

HANDICAPPED FEDERAL EMPLOYEES

Executive order 16879

TREASURY NOTES

Treasury/Secy invites tenders for notes of March 31, 1981 of Series R-1981 16991

INVESTMENT COMPANIES

SEC proposes policy concerning use of false and misleading sales literature; comments by 5-15-79 16935

FINANCIAL INSTITUTIONS

Treasury/Secy issues regulations authorizing and stipulating conditions for requests of financial records; effective 3-20-79.. 16908

EQUAL EMPLOYMENT OPPORTUNITY

Labor/FCCPO proposes rules to clarify requirements for conciliation agreements, impose Affirmative Action Program filing requirement and expedite hearing procedure; comments by 4-19-79 (Part VII of this issue) 17136

NATURAL GAS

DOE/FERC issues regulations regarding price escalator clauses in existing interstate and intrastate contracts for initial sales and amends protest procedures for filings; effective 3-13-79 16895

DOE/ERA issues notice of inquiry into curtailment priorities and distribution management in emergency situations; comments by 5-31-79 16954

OUTER CONTINENTAL SHELF

FMC adopts rules regarding demonstration of financial responsibility by owners and operators of vessels carrying oil for damages resulting from oil discharges; effective 3-20-79 16918

AIR POLLUTION

EPA amends regulations governing preparation of contingency plans for emergency episodes; effective 3-20-79 16911

ENERGY

DOE/OHA amends administrative procedures regarding applications for exception; effective 3-20-79 16884

CLAUS SULFUR RECOVERY PLANTS

EPA proposes to eliminate total crude oil processing capacity requirement governing exemption from performance standards for small plants located in small petroleum refineries; comments by 5-21-79 (Part V of this issue) 17120

FEDERAL AND FEDERALLY ASSISTED PROGRAMS AND PROJECTS

HUD/Secy adopts rules regarding processing procedures and program staff coordination; effective 4-19-79 (Part VI of this issue) 12124

CONTINUED INSIDE

Registered
Federal
Order

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

***NOTE:** As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)

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FEDERAL REGISTER, Daily Issue:

Subscription orders (GPO)	202-783-3238
Subscription problems (GPO).....	202-275-3054
"Dial - a - Reg" (recorded summary of highlighted documents appearing in next day's issue).	
Washington, D.C.	202-523-5022
Chicago, Ill	312-663-0884
Los Angeles, Calif	213-688-6694
Scheduling of documents for publication.	202-523-3187
Photo copies of documents appearing in the Federal Register.	523-5240
Corrections	523-5237
Public Inspection Desk	523-5215
Finding Aids	523-5227
Public Briefings: "How To Use the Federal Register."	523-5235
Code of Federal Regulations (CFR)..	523-3419
	523-3517
Finding Aids	523-5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523-5233
Weekly Compilation of Presidential Documents.	523-5235
Public Papers of the Presidents	523-5235
Index	523-5235

PUBLIC LAWS:

Public Law numbers and dates	523-5266
	523-5282
Slip Law orders (GPO)	275-3030

U.S. Statutes at Large	523-5266
	523-5282
Index	523-5266
	523-5282

U.S. Government Manual	523-5230
------------------------------	----------

Automation	523-3408
------------------	----------

Special Projects	523-4534
------------------------	----------

HIGHLIGHTS—Continued

LAW AND GOVERNMENT STUDIES IN EDUCATION

HEW/National Institute of Education announces acceptance of applications for research grants for fiscal year 1979; proposals by 4-12 and 8-2-79 **16963**

FAMILY PLANNING

HEW/HSA announces availability of grants for fiscal year 1979 for general training projects; applications by 6-12 and 7-2-79.. **16963**

RELOCATION ASSISTANCE

DOD/Army adopts rules to clarify and revise certain procedures under Army program; effective 3-23-79..... **16910**

INVESTIGATORY RECORDS

Treasury/Customs proposes to exempt Automated Index to Central Enforcement Files system from Privacy Act requirements; comments by 4-19-79 **16940**

MOTOR TRANSPORTATION SERVICES

ICC issues notice of intent to establish procedures for special temporary authority applications; comments by 4-19-79 **16996**

NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES

EPA issues technical amendments to certification regulations; effective 4-19-79 **16916**

CERTAIN RAILROADS, MOTOR CARRIERS, AND FREIGHT FORWARDERS

ICC requires disclosure of contributions to employee stock ownership plans in annual reports resulting from recognition of investment tax credits; effective 1-1-79 **16934**

MEDICAL DEVICES

HEW/FDA invites public views on recommendation that Tri-Cy Test Set not be reclassified from class III into class II; comments by 4-19-79 **16961**

NEW ANIMAL DRUGS

HEW/FDA proposes criteria for evaluating methods of analysis for cancer-causing residues in edible animal products; comments by 7-18-79; hearing on 6-4-79; requests to participate by 5-4-79 (Part III of this issue) **17070**

PESTICIDES

EPA classifies Bolstar 6 Emulsifiable Insecticide for restricted use in control of cotton bollworm and tobacco budworm in cotton **16960**

FRESH IRISH POTATOES

USDA/FSQS amends regulations governing Livestock Feed Diversion Program; effective 3-19-79 **16883**

45 RPM ADAPTORS FROM THE UNITED KINGDOM

Treasury/Secy terminates antidumping investigation based on no likelihood of injury to domestic industry; effective 3-20-79.. **16991**

FOREIGN FISHING

State summarizes applications to fish off U.S. coasts received from Japan, Korea, and Polish Peoples's Republic (Part II of this issue) **17067**

INDIAN FISHING

Interior/BIA issues regulations governing Hoopa Valley Indian Reservation for 1979 salmon, steelhead, and sturgeon fisheries; effective 4-1-79 (Part IX of this issue) **17144**

HIGHLIGHTS—Continued

INTERNATIONAL TRADE

Commerce/MA issues determination of essentiality for Trade Area 1 recommending entrance into market of U.S.-flag carriers	16948
---	-------

U.S. FOREIGN-TRADE ZONES

Commerce/FTZB rescinds order to lift restriction on gold-processing operations	16942
--	-------

MEETINGS—

DOE/FERC: Alternative fuel cost ceiling on incremental pricing under Natural Gas Policy Act, 4-2 and 4-4-79; comments by 4-2-79	16937
Commerce: Frequency Management Advisory Council 4-5-79	16952
ITA: Importers' Textile Advisory Committee, 4-26-79	16948
DOE: National Petroleum Council, Committee on Materials and Manpower Requirements, Regulatory Impact Task Group, 3-20-79, and Tubular Steel Task Group, 3-29-79	16952
Petroleum supply alternatives for the northern tier and inland states through the year 2000, 4-18-79	16952
HEW/OE: National Advisory Council on Women's Educational Programs, 4-3 through 4-5-79	16961
Interior/BLM: Burley District Grazing Advisory Board, 4-26-79	16965

HCRS: Consulting Committee to the National Survey of Historic Sites and Buildings, 4-19 and 4-20-79	16966
Secy: Outer Continental Shelf Advisory Board, Policy Committee, 4-17 and 4-18-79	16967
NRC: Advisory Committee on Reactor Safeguards, Subcommittee on Consideration of Class-8 Accidents, 4-4-79 ..	16985
Advisory Committee on Reactor Safeguards, Subcommittee on Power and Electrical Systems, 3-30-79	16985
Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Activities, 4-4-79	16986
Advisory Committee on Reactor Safeguards, Procedures Subcommittee, 4-4-79	16986
State/Bureau of Oceans and International Environmental and Scientific Affairs: Migratory Species Convention, 4-10-79	16990

SUNSHINE ACT MEETINGS

SEPARATE PARTS OF THIS ISSUE

Part II, State	17067
Part III, HEW/FDA	17070
Part IV, Labor/FCCPO	17115
Part V, EPA	17120
Part VI, HUD/Secy	17124
Part VII, Labor/FCCPO	17136
Part VIII, OMB	17140
Part IX, Interior/BIA	17144

contents

THE PRESIDENT

Executive Orders:

Handicapped Federal employees, civil service competitive status (EO 12125)..... 16879

Proclamations

Mother's Day (Proc. 4646)..... 16881

EXECUTIVE AGENCIES

AGRICULTURAL MARKETING SERVICE

Rules

Cranberry Marketing Committee; nominating public member..... 16883

AGRICULTURE DEPARTMENT

See Agricultural Marketing Service; Food Safety and Quality Service; Rural Electrification Administration.

ARMY DEPARTMENT

Rules

Real property:
Relocation assistance and real property acquisition policies..... 16910

CIVIL AERONAUTICS BOARD

Rules

Procedural regulations:
Unused nonstop route authority; GAO approval..... 16894

Notices

Meetings; Sunshine Act (3 documents)..... 17023

COMMERCE DEPARTMENT

See Foreign-Trade Zones Board; Industry and Trade Administration; Maritime Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration; National Telecommunications and Information Administration.

CUSTOMS SERVICE

Proposed Rules

Privacy Act; implementation 16940

DEFENSE DEPARTMENT

See Army Department.

DRUG ENFORCEMENT ADMINISTRATION

Notices

Registration applications, etc.; controlled substances:
Galler Drug Co..... 16968
Shellabarger, Steven G., M.D..... 16968

ECONOMIC REGULATORY ADMINISTRATION

Notices

Natural gas:
Distribution and emergency management; curtailment priorities; review; inquiry 16954

EDUCATION OFFICE

Notices

Meetings:
Women's Education Programs National Advisory Council... 16961

EMPLOYMENT AND TRAINING ADMINISTRATION

Notices

Employment transfer and business competition determinations; financial assistance applications..... 16968
Unemployment compensation:
Federal extended benefits; "on" and "off" indicators; Rhode Island 16969

ENERGY DEPARTMENT

See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department.

Rules

Oil; administrative procedures and sanctions:
Interpretations 16890
Procedures for applications for exception amendments .. 16884

Notices

Meetings:
National Petroleum Council ... 16952
Northern Tier and inland State petroleum supply alternatives study report; hearings and inquiry 16952

ENVIRONMENTAL PROTECTION AGENCY

Rules

Air pollution control, new motor vehicles and engines:
Certification and test procedures; technical amendments 16916
Air quality implementation plans; approval and promulgation; various States, etc.:
California (2 documents)..... 16913
Air quality implementation plans; delayed compliance orders:
California 16912
Air quality implementation plans; preparation, adoption, and submittal:
Air pollution emergency episodes; preparation of contingency plans procedures 16911

Proposed Rules

Air pollution; standards of performance for new stationary sources:
Petroleum refinery Claus sulfur recovery plants; definition of small refinery 17120

Notices

Committees; establishment, renewals, terminations, etc.:
Interagency Toxic Substances Data Committee 16959
Grants, State and local assistance:
Treatment works construction; draft Innovative and Alternative Technology Assessment Manual; availability 16958
Pesticide registration, cancellation, etc.:
Bolstar 6 16960

FEDERAL COMMUNICATIONS COMMISSION

Notices

Hearings, etc.:
American Telephone & Telegraph Co..... 16960
Meetings; Sunshine Act 17024

FEDERAL CONTRACT COMPLIANCE PROGRAMS OFFICE

Proposed Rules

Compliance responsibility for equal opportunity employment 17136

Notices

Women and minorities in construction; participation goals and timetables for Pennsylvania 17116

FEDERAL DISASTER ASSISTANCE ADMINISTRATION

Notices

Disaster and emergency areas:
Trust Territory of Pacific Islands..... 16964

FEDERAL ELECTION COMMISSION

Notices

Meetings; Sunshine Act 17024

FEDERAL ENERGY REGULATORY COMMISSION

Rules

Natural Gas Policy Act of 1978:
Maximum ceiling prices; filing procedures 16895

Proposed Rules

Natural Gas Policy Act of 1978:
Incremental pricing; conference and inquiry 16937

CONTENTS

FEDERAL MARITIME COMMISSION

Rules

Outer Continental Shelf, financial responsibility for water pollution 16918

FEDERAL RESERVE SYSTEM

Notices

Meetings; Sunshine Act 17024

FEDERAL TRADE COMMISSION

Rules

Prohibited trade practices:
CPC International Inc., et al .. 16894
Lancaster Colony Corp., et al 16895

FOOD AND DRUG ADMINISTRATION

Proposed Rules

Animal drugs, feeds, and related products:
Carcinogenic residues assays; evaluation criteria and procedures 17070

Notices

Food additives; petitions filed or withdrawn:
Henkel Inc. 16961
Medical devices:
Tri-Cy Test Set; reclassification; inquiry 16961

FOOD SAFETY AND QUALITY SERVICE

Rules

Potatoes (Irish); livestock feed diversion program 16883

FOREIGN-TRADE ZONES BOARD

Gold processing operations; restrictions withdrawn 16942

GENERAL SERVICES ADMINISTRATION

Rules

Property management, Federal: ADP management; sharing exchange, addresses and locations 16917

Notices

Authority delegations:
Defense Secretary; rate increase proceedings 16960

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See Education Office; Food and Drug Administration; Health Services Administration; National Institute of Education.

HEALTH SERVICES ADMINISTRATION

Notices

Grants; availability:
Family planning training 16963

HEARINGS AND APPEALS OFFICE, ENERGY DEPARTMENT

Rules

Administrative procedures and sanctions; oil:
Applications for exception 16884

HERITAGE CONSERVATION AND RECREATION SERVICE

Notices

Historic Places National Register; additions, deletions, etc.:
Alabama et al 16965
Meetings:
Potential National Historic Landmarks Consulting Committee 16966

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See also Federal Disaster Assistance Administration.

Rules

OMB Circular No. A-95; implementation 17124

INDIAN AFFAIRS BUREAU

Rules

Hoopa Valley Indians Reservation; 1979 salmon, steelhead, and sturgeon fisheries 17144

Notices

Environmental statements; availability, etc.:
Mount Tolman Copper-Molybdenum Mine; Colville Indian Reservation, Wash 16964

INDUSTRY AND TRADE ADMINISTRATION

Notices

Meetings:
Importer's Textile Advisory Committee 16948
Scientific articles; duty free entry:
Commerce Department et al .. 16945
National Center for Toxicological Research et al 16946
National Bureau of Standards 16947
Rush-Presbyterian-St. Luke's Medical Center et al 16942
University of Texas 16944
Veterans Administration Medical Center 16948

INTERIOR DEPARTMENT

See also Heritage Conservation and Recreation Service; Indian Affairs Bureau; Land Management Bureau.

Notices

Meetings:
Outer Continental Shelf Advisory Board 16967

INTERNATIONAL COMMUNICATION AGENCY

Notices

Advisory committee review; inquiry 16967

INTERNATIONAL TRADE COMMISSION

Notices

Meetings; Sunshine Act 17024

INTERSTATE COMMERCE COMMISSION

Rules

Motor carriers:
Employee stock ownership plans; reporting contributions 16934
Railroad car service orders:
Freight cars; distribution 16932
Railroad car service orders; various companies:
Chicago & North Western Transportation Co 16933
Illinois Terminal Railroad Co 16933

Notices

Fourth section applications for relief 16996
Hearing assignments 16993
Motor carriers:
E-letter notices; certification procedures 16993
Permanent authority applications 17007
Temporary authority applications; special procedures 16996
Railroad services abandonment:
Chicago & Northwestern Transportation Co 16997

JUSTICE DEPARTMENT

See Drug Enforcement Administration.

LABOR DEPARTMENT

See also Employment and Training Administration; Federal Contract Compliance Programs Office; Mine Safety and Health Administration; Pension and Welfare Benefit Programs Office.

Notices

Adjustment assistance:
American Latex Corp. et al 16972
Arrow Co. et al 16971
Bunker Hill Co 16978
Cooper Sportswear 16978
Cooper-Wiss, Inc 16972
Copper Range Co 16979
Davis Casket Co 16979
Day's Inc. 16973
Denley Knitting Mills 16973
Dolan Steel Co 16973
E.I. DuPont de Nemours & Co 16980
Forrest City Fashions 16980
GAF Corp (2 documents) 16974, 16981
G.C. Fashions 16974
Hills Brothers Coffee, Inc 16981
Master Corp. of Texas 16981
Mercer Dress 16974
Mill Coal Co., Inc 16975
Monique Brassiere Co 16982
Niemor Contractor 16982
Nifty Creations, Inc 16975
Nipak, Inc 16983
Pilling Chain Co., Inc 16983
Royal Coal Co. (2 documents) 16976, 16983

CONTENTS

S & M Leather Coat Co	16984	NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	RURAL ELECTRIFICATION ADMINISTRATION
Skyland Virginia Corp	16984		
Slab Fork Coal Co	16977	Notices	Notices
United Pocahontas Coal Co. (2 documents)	16977	Marine mammal permit applica- tions:	Environmental statements; availability, etc.:
University Clothing Corp	16985	Aquarium of Niagara Falls.....	Allied Power Cooperative of Iowa 16942
		Land Management Bureau	
LAND MANAGEMENT BUREAU			
Notices		NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION	SECURITIES AND EXCHANGE COMMISSION
Meetings:		Notices	Proposed Rules
Burley District Grazing Advi- sory Board	16965	Meetings:	Investment company sales lit- erature; policy statement withdrawn 16935
MANAGEMENT AND BUDGET OFFICE		Frequency Management Advi- sory Council.....	
Notices			
Budget rescissions and defer- rals	17140	NUCLEAR REGULATORY COMMISSION	
MARITIME ADMINISTRATION		Notices	Notices
Notices		Applications, etc.:	Hearings, etc.:
Great Lakes service operations; winter alternatives.....	16948	New England Power Co., et al..	West Texas Utilities Co.....
		Transnuclear, Inc., et al	16987
METRIC BOARD		Meetings:	Meetings; Sunshine Act
Notices		Reactor Safeguards Advisory Committee (4 documents)....	Self-regulatory organizations; proposed rule changes: Midwest Securities Trust Co ..
Meetings; Sunshine Act	17024		16985, 16986 17024
MINE SAFETY AND HEALTH ADMINISTRATION		Meetings; Sunshine Act	
Notices			
Petitions for mandatory safety standard modification:		PENSION AND WELFARE BENEFIT PROGRAMS OFFICE	STATE DEPARTMENT
Brownies Creek Collieries, Inc.	16969	Notices	Notices
Sewell Coal Co. (2 docu- ments).....	16970	Employee benefit plans:	Fishing permits, applications:
Welden Mining Co	16970	Rulings and determination letters; process for obtain- ing; ruling notification	Japan et al..... 17067
NATIONAL BUREAU OF STANDARDS			Meetings:
Notices		POSTAL RATE COMMISSION	Migratory Species Convention draft 16990
Voluntary product standards:		Notices	
Hinged interior wood door units; withdrawal intent.....	16951	Meetings; Sunshine Act	TREASURY DEPARTMENT
NATIONAL INSTITUTE OF EDUCATION		Post office closing; petitions for appeal:	See also Customs Service.
Notices		Overly, N. Dak.....	Rules
Grant programs, application closing dates:			Right to Financial Privacy Act: Formal written request proce- dure 16908
Research grants on law and government studies in edu- cation	16963	RAILROAD RETIREMENT BOARD	Notes, Treasury: R-1981 series..... 16991
		Notices	
		Meetings; Sunshine Act	
		REGULATORY COUNCIL	
		Notices	
		Regulatory calendar for Federal agencies; correction (2 docu- ments)	Antidumping: 45 r.p.m. adaptors from Unit- ed Kingdom 16991
			Notes, Treasury: R-1981 series..... 16991

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list, has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

DOT/FAA—Publication of petitions for rule-making and for exemptions in the FEDERAL REGISTER..... 6897; 2-5-79

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

[Last Listing Mar. 9, 1979]

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.
A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

3 CFR		18 CFR—Continued		40 CFR	
EXECUTIVE ORDERS:		270	16908	51	16911
12125	16879	273	16908	52 (2 documents)	16912, 16913
PROCLAMATIONS:		PROPOSED RULES:		65	16913
4646	16881	280	16937	86	16916
7 CFR		21 CFR		PROPOSED RULES:	
929	16883	PROPOSED RULES:		60	17120
2880	16883	70	17106	41 CFR	
10 CFR		500	17106	101-36	16917
205 (2 documents)	16884, 16890	514	17114	PROPOSED RULES:	
14 CFR		571	17114	60-1	17136
321	16894	24 CFR		60-2	17136
16 CFR		52	17124	60-3	17136
13 (2 documents)	16894, 16895	25 CFR		46 CFR	
17 CFR		258	17144	544	16918
PROPOSED RULES:		31 CFR		49 CFR	
230	16935	14	16908	1033 (3 documents)	16932, 16933
18 CFR		PROPOSED RULES:		1241	16934
154	16908	1	16940	1249	16934
		32 CFR		1251	16934
		641	16910		

CUMULATIVE LIST OF CFR PARTS AFFECTED DURING MARCH

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during March.

1 CFR

Ch. I..... 11517
475..... 12155

PROPOSED RULES

Ch. III..... 12198, 14562

3 CFR

ADMINISTRATIVE ORDERS:

Presidential Determinations:

No. 79-4 of January 31, 1979... 12151
No. 79-5 of February 6, 1979... 12153
No. 73-10 of January 2, 1973
(Amended by Presidential
Determination No. 79-5 of
Feb. 6, 1979)..... 12153

EXECUTIVE ORDERS:

6002 (Revoked by PLO 5658) 14559
11888 (Amended by EO 12124) .. 11729
12124..... 11729
12125..... 16879

PROCLAMATIONS:

4643..... 12601
4644..... 12603
4645..... 16355
4646..... 16881

5 CFR

Ch. I..... 14533
300..... 11996
451..... 15987
536..... 11741

7 CFR

2..... 16357
25..... 12156
25a..... 12156
401..... 16359
725..... 15989
726..... 15991
795..... 14533
905..... 12605
907..... 11745, 12606, 14533, 15641
910..... 11746, 12953, 15992
916..... 12156
917..... 12156
928..... 12606
929..... 12017, 16883
959..... 11746
971..... 11517
1421..... 15465
1464..... 15993
1900..... 15641
1955..... 15994
1980..... 12607, 15995
2853..... 12953
2880..... 12954, 16883
2900..... 11518

PROPOSED RULES:

800..... 11923
802..... 11982
803..... 11984
929..... 11785
1062..... 13033

7 CFR—Continued

PROPOSED RULES—Continued

1068..... 16019
1073..... 14591, 14604
1097..... 14592, 14604
1102..... 14593, 14604
1104..... 14595, 14604
1106..... 14596, 14605
1108..... 14597, 14605
1120..... 14599, 14606
1126..... 14589, 14603
1132..... 14600, 14606
1133..... 16019
1138..... 14602, 14607
1402..... 11555
1438..... 12199
1701..... 14607
1948..... 12936
2900..... 12428

8 CFR

235..... 12157
238..... 12399
242..... 15996
287..... 15996

PROPOSED RULES:

100..... 14562
242..... 12199

9 CFR

78..... 15997
82..... 11748, 12159, 12957, 15997, 15998
85..... 12159
92..... 12958

10 CFR

9..... 15998
35..... 11749
51..... 16360
205..... 12160, 16884, 16890
210..... 12634
211..... 12634, 12959
212..... 12399, 12634, 14534, 15600
570..... 15568
580..... 15471, 15642
600..... 12920
1022..... 12594

PROPOSED RULES:

2..... 12428
205..... 16884, 16890
211..... 12431
212..... 12431
450..... 13554
455..... 13554
456..... 16546
475..... 12685
500..... 12227
501..... 12227
502..... 12227
503..... 12227
505..... 12227

12 CFR

215..... 12959
217..... 16360
219..... 12968

12 CFR—Continued

225..... 12019
226..... 11749, 12970, 15474
250..... 12968
261b..... 11750
329..... 15476
523..... 15647
526..... 15478
545..... 15479
563..... 15647
701..... 12401, 15479

PROPOSED RULES:

Ch. I..... 15728
215..... 13035
304..... 13035
349..... 13035
575..... 15507
576..... 15507
577..... 15508
578..... 15511
701..... 11785
720..... 12431
740..... 15512
745..... 15512

13 CFR

120..... 11750
123..... 16361
309..... 16003

PROPOSED RULES:

Ch. V..... 12562
108..... 11787
121..... 12200, 15513

14 CFR

21..... 15648
39..... 11527,
11528, 12019-12024, 12635-12637,
15650, 16362-16364
71..... 11530-
11534, 12026, 12639, 15651-15653,
16364, 16365
73..... 11532, 11535, 12640, 16366
91..... 15654
95..... 15656
97..... 11536, 12640, 15657
296..... 14536
321..... 16894
380..... 12971
385..... 15657

PROPOSED RULES:

1..... 12042
13..... 16424
21..... 12042, 12044, 12045
23..... 16856
25..... 16433, 16856
27..... 12685
29..... 12685
37..... 16434
39..... 12686, 12687
43..... 12685
61..... 12685
65..... 12042
71..... 11555-
11558, 12042, 12688, 12689,
15730, 15731, 16438-16440

FEDERAL REGISTER

14 CFR—Continued

PROPOSED RULES—Continued

73	11559
91	12042, 12685
105	12042
121	12685, 15732
127	12685
129	15732
133	12685
135	12685, 16856
385	15733
1214	16020

15 CFR

7a	12982
7b	12982
8	12642
370	12405
373	12406, 12642
379	12405
385	12405
399	12405

PROPOSED RULES:

Ch. I	12562
Ch. II	12562
Ch. III	12562
Ch. IV	12562
Ch. VIII	12562
Ch. IX	12562
Ch. XII	12562
501	12690
931	16852
2301	13262

16 CFR

1	16366
13	15660, 16894, 16895
23	16004
24	16004
1700	12990

PROPOSED RULES:

13	11560, 13493, 16021, 16441
436	11565
440	15518
1208	13040
1209	12864, 12872

17 CFR

1	13439
12	12027
140	13458
145	13458
147	13458
211	12163
230	15610
231	16368
240	11751
241	11537, 16368
250	11541
256	11541
271	16368

PROPOSED RULES:

Ch. I	13494
1	16443
210	12201
230	16935
270	12202, 12204

18 CFR

35	16371
154	13460, 16908

18 CFR—Continued

270	16908
273	16908
280	12409
281	12409, 13464
282	12409
283	12409
284	12409
285	12409
286	12409, 13473
708	14537
803	13473

PROPOSED RULES:

4	12432
16	12432
131	12432
280	16937
290	12438, 14562

19 CFR

6	12028
101	12029
141	12411
153	12417

20 CFR

404	12418, 13473
410	12164
416	12578, 12579, 15661, 15663
653	13244
680	12394
901	11751

PROPOSED RULES:

404	12205
680	13188

21 CFR

7	12164
16	13234
73	16004
81	12169, 16004
101	16005
103	12169
105	16006
108	16204
113	16209
114	16230
129	12173
131	11752
184	12991
193	13473
201	16006
310	11753, 14540
448	16006
514	16007
520	12991, 12992, 16009, 16010
522	11754, 12992, 16010, 16011
524	16012
558	16012
561	12030, 13473
610	11754
620	14541
800	13234
1308	15480
1310	12993

PROPOSED RULES:

70	17106
81	12205
207	12208
210	12208
225	12208
226	12208

21 CFR—Continued

PROPOSED RULES—Continued

333	13041
345	16126
436	11788
455	11789
500	17106
501	12208
510	12208
514	12208, 17114
522	12208
555	11789
558	12208
571	17114
870	13284

22 CFR

502	16372
504	16373
505	16374
511	16374

PROPOSED RULES:

17	12457
22	12209

23 CFR

630	11541, 11754
650	15665
655	11543, 12646
661	11542
771	12995
924	11543

PROPOSED RULES:

645	12209
658	15638

24 CFR

52	17124
300	11755
811	12358
882	16848
1914	12175-12179, 13475, 16374
1915	12995, 13477
1917	11755-11758, 12180-12190, 12427, 12646-12668, 12996-13006, 15666-15697
1920	16376-16384
1931	12668

PROPOSED RULES:

880	11566
881	11566
882	15733
883	11566
1917	13501-13527, 14563, 14564, 14566-14576, 16444

25 CFR

221	12191, 12192
258	17144
700	13007

PROPOSED RULES:

55	12210
120a	12458
273	13042

26 CFR

1	12418, 14548, 16013
31	14552, 15484

FEDERAL REGISTER

26 CFR—Continued

PROPOSED RULES:

1	11789, 12459
20	11791, 12459
25	11791
26	13043
31	12213

27 CFR

170	15697
-----	-------

PROPOSED RULES:

4	14577
5	14577
7	14577
47	11795
178	11795
179	11795

28 CFR

20	12031
47	14553
50	11996
301	11759, 13008

PROPOSED RULES:

Ch. I	11804
2	12692

29 CFR

1404	13008
1601	15701
1604	13278
1607	11996
1910	14554
1952	11760, 13013
2510	11761

PROPOSED RULES:

Ch. XII	14577
1601	15733

30 CFR

Ch. VII	17795, 14902, 15485
---------	---------------------

PROPOSED RULES:

211	12046, 12052, 12058
250	13527

31 CFR

14	16908
51	11996
103	13478
500	11764
515	11768
520	11771

PROPOSED RULES:

1	15734, 16940
---	--------------

32 CFR

159	12669, 16013
246	11774
564	16385
575	11781
641	16910

PROPOSED RULES:

988	12064
-----	-------

32A CFR

PROPOSED RULES:

Ch. VI	12562
--------	-------

33 CFR

117	12031, 12670, 13478, 15702
135	16868
136	16873
165	11546, 15702, 15703
207	12192

PROPOSED RULES:

117	11566, 13543
126	12693
157	11567
401	12065

36 CFR

313	12671
322	12671
327	12672
1228	15486

PROPOSED RULES:

7	16021
---	-------

37 CFR

PROPOSED RULES:

Ch. I	12562
2	16022

38 CFR

21	15491
36	16014

PROPOSED RULES:

3	12694, 13544
---	--------------

39 CFR

955	13013, 16015
-----	--------------

PROPOSED RULES:

111	15514
-----	-------

40 CFR

51	16911
52	12420-
	12422, 13478-13480, 14555, 15703,
	15704, 16386, 16912, 16913
60	13480
65	12192,
	12423, 13015-13081, 13481-13489,
	14558, 15493, 15705-15710, 15712,
	15713, 16913
81	16388
86	16393, 16916
162	13019
180	13490
440	11546

PROPOSED RULES:

51	15735
52	11798,
	12459, 13545, 15735, 15738,
	15741, 16024
56	13043
60	15742, 17120
65	12461, 12463, 13546
81	15743
86	11802, 15517
117	15744
180	13547
231	14578
250	13548
1517	16024

PROPOSED RULES:

51	15735
52	11798,
	12459, 13545, 15735, 15738,
	15741, 16024
56	13043
60	15742, 17120
65	12461, 12463, 13546
81	15743
86	11802, 15517
117	15744
180	13547
231	14578
250	13548
1517	16024

41 CFR

Ch. 101	12031, 13024
60-3	11996

41 CFR—Continued

101-11	15715
101-17	16394
101-36	16917

PROPOSED RULES:

60-1	17136
60-2	17136
60-3	17136

42 CFR

52	13025
91	12034
405	16396
431	12578, 12585, 15494, 16398
463	16398

PROPOSED RULES:

59	13549
405	15744, 15745
473	12067

43 CFR

3200	12037
3220	12037

PROPOSED RULES:

4	11803
3400	16809
3410	16813
3420	16816
3430	16827
3440	16832
3450	16832
3460	16834
3470	16840
3500	12464

PUBLIC LAND ORDERS:

5658	14559
5659	15720

45 CFR

25	13028
205	12578, 12579
228	16398
233	12424

PROPOSED RULES:

Ch. XX	12562
76	16444
87	14582
119	11567
120	11567
134	11567
161h	13048
166	11567
205	16449
206	16449
228	16449
233	12214
234	11803, 16449
670	12214
1061	12708, 16445

46 CFR

31	13491
50	13492
71	13491
91	13491
176	13492
189	13492
502	14560
530	12194

FEDERAL REGISTER

46 CFR—Continued

531.....	11547
536.....	11547
544.....	16918

PROPOSED RULES:

Ch. II.....	12562
30.....	12717
32.....	12717
34.....	12717
160.....	15923
401.....	15984
502.....	14582, 15517
503.....	15517

47 CFR

0.....	12424
1.....	12425, 16401
2.....	12679
74.....	16401
81.....	12194, 16401
83.....	16402
97.....	12679, 12681, 16015

PROPOSED RULES:

Ch. I.....	12466
31.....	13051
33.....	13051
42.....	13051
43.....	13051
73.....	11568, 15519, 16459
94.....	12220, 12221
97.....	12473, 16460

48 CFR

PROPOSED RULES:

Ch. I.....	12225
3.....	13053
4.....	13053
5.....	13053
20.....	13053
25.....	13053
28.....	13053

49 CFR

171.....	14195
173.....	14195
178.....	14198
211.....	13028
230.....	11547
531.....	11548
571.....	11549
573.....	11551
575.....	15721
1001.....	13029
1011.....	12426
1033.....	11783-
	12041, 12195, 12196, 13030, 15494,
	16932, 16933
1124.....	11783
1125.....	13030, 16016
1127.....	16402
1241.....	16934
1245.....	11551
1246.....	11551
1249.....	16934
1251.....	16934

49 CFR—Continued

PROPOSED RULES:

Ch I-VI.....	11674
171.....	11569, 12826
172.....	11569, 12826, 15748
173.....	11569, 12826
174.....	11569, 12826
175.....	11569, 15748
176.....	11569, 12826
177.....	11569, 12826
178.....	12826
179.....	12826
191.....	12070
395.....	12717
571.....	12072, 16461
575.....	15748
581.....	11569
1082.....	12473
1331.....	12074, 12718

50 CFR

26.....	13031, 15495
33.....	12681-12683, 15724
96.....	15500
611.....	15503, 15726
651.....	16017
653.....	16018
671.....	15503

PROPOSED RULES:

Ch. II.....	12562
Ch. VI.....	12562
17.....	12382, 12386, 12390
260.....	16025
651.....	11571

FEDERAL REGISTER PAGES AND DATES—MARCH

Pages	Date	Pages	Date
11517-11727.....	Mar. 1	13435-14531.....	12
11729-12015.....	2	14533-15463.....	13
12017-12149.....	5	15465-15640.....	14
12151-12397.....	6	15641-15985.....	15
12399-12599.....	7	15987-16354.....	16
12601-12951.....	8	16355-16877.....	19
12953-13434.....	9	16879-17151.....	20

GENERAL INDEX

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200

GENERAL INDEX

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200

presidential documents

Title 3—
The President

Executive Order 12125 of March 15, 1979

Competitive Status for Handicapped Federal Employees

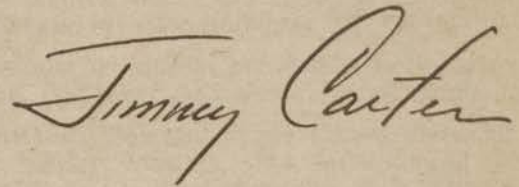
By the authority vested in me as President of the United States of America by Sections 3301 and 3302 of Title 5 of the United States Code, and in order to permit severely physically handicapped and mentally retarded individuals to obtain civil service competitive status, Civil Service Rule 3.1 (5 CFR 3.1) is hereby amended by adding the following new subsection:

"(b) Upon recommendation by the employing agency, and subject to such requirements as the Office of Personnel Management may prescribe, the following classes of handicapped employees may acquire competitive status without competitive examination:

"(1) A severely physically handicapped employee who completes at least two years of satisfactory service in a position excepted from the competitive service.

"(2) A mentally retarded employee who completes at least two years of satisfactory service in a position excepted from the competitive service."

THE WHITE HOUSE,
March 15, 1979.



[FR Doc. 79-8468
Filed 3-16-79; 2:23 pm]
Billing code 3195-01-M

Proclamation 4646 of March 16, 1979

Mother's Day, 1979

By the President of the United States of America

A Proclamation

For 65 years we have set aside a special day to honor all American mothers and acknowledge the important contribution of mothers to the future of their children and of our Nation.

The activities and aspirations of many American women have changed dramatically in recent years. Whether or not they combine employment outside the home with their other responsibilities, the fundamental commitment of mothers to the welfare, development and future opportunities of their children remains as strong as that of mothers in past generations.

In this time when the family is subjected to many new pressures, the job of nurturing future generations is often both more difficult and more important than ever. Our children remain our major resource, and preserving the valuable aspects of our heritage while working to build a better world for the future is the duty of all Americans.

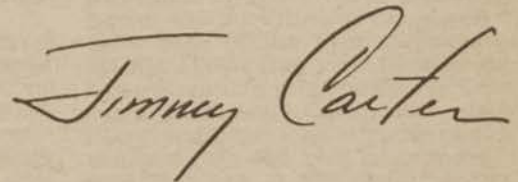
Our Nation has made great progress in providing educational opportunities, health care and adequate nutrition for our children, but we still have much to do to make sure all our children are able to develop their full potential. In addition to these basic necessities, parents must provide the love and training that produces the critical spiritual and social values as well as the motivation and self-discipline their children will need to live fruitful lives.

Mother's Day affords us an opportunity to express our thanks to our own mothers, and to honor the devotion, dedication and service of all mothers.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby request that Sunday, May 13, 1979, be observed as Mother's Day. I direct Government officials to display the flag of the United States on all Government buildings. I urge all citizens to display the flag in appropriate ways as a sign of their gratitude to the mothers of America, and to seek ways to aid and support the important efforts of American mothers to provide the kind of influences and resources their children need to develop into strong, honest, capable and happy adults.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of March, in the year of our Lord nineteen hundred seventy-nine, and of the Independence of the United States of America the two hundred and third.

[FR Doc. 79-8469
Filed 3-16-79; 2:24 pm]
Billing code 3195-01-M



Vol. 1, No. 1, 1891

OF THE JOURNAL OF THE UNITED STATES OF AMERICA

1891

The first of the year is a special issue devoted to the study of the history of the United States. It contains a number of articles on the history of the country, and is a valuable contribution to the study of the subject. The second issue is devoted to the study of the history of the United States. It contains a number of articles on the history of the country, and is a valuable contribution to the study of the subject. The third issue is devoted to the study of the history of the United States. It contains a number of articles on the history of the country, and is a valuable contribution to the study of the subject. The fourth issue is devoted to the study of the history of the United States. It contains a number of articles on the history of the country, and is a valuable contribution to the study of the subject. The fifth issue is devoted to the study of the history of the United States. It contains a number of articles on the history of the country, and is a valuable contribution to the study of the subject. The sixth issue is devoted to the study of the history of the United States. It contains a number of articles on the history of the country, and is a valuable contribution to the study of the subject. The seventh issue is devoted to the study of the history of the United States. It contains a number of articles on the history of the country, and is a valuable contribution to the study of the subject. The eighth issue is devoted to the study of the history of the United States. It contains a number of articles on the history of the country, and is a valuable contribution to the study of the subject. The ninth issue is devoted to the study of the history of the United States. It contains a number of articles on the history of the country, and is a valuable contribution to the study of the subject. The tenth issue is devoted to the study of the history of the United States. It contains a number of articles on the history of the country, and is a valuable contribution to the study of the subject.

Wm. L. G. [Signature]

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[3410-37-M]

Title 7—Agriculture

CHAPTER XXVIII—FOOD SAFETY AND QUALITY SERVICE (FRUIT AND VEGETABLE QUALITY DIVISION), DEPARTMENT OF AGRICULTURE

SUBCHAPTER E—EXPORT AND DOMESTIC CONSUMPTION PROGRAMS

PART 2880—FRESH IRISH POTATOES

Subpart—Fresh Irish Potatoes—Livestock Feed Diversion Program

ADEQUATE PASTURING BY LIVESTOCK

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations by adding a definition of adequate pasturing by livestock. This amendment is necessary to clarify that phase of the program pertaining to the utilization of potatoes for livestock feed after dehydration through a process of alternate freezing and thawing.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. D. A. Thibeault, Chief, Commodity Procurement Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2781.

SUPPLEMENTARY INFORMATION: A regulation was published in the November 24, 1978, FEDERAL REGISTER (43 FR 54921-54923) which set forth the terms and conditions of the Irish potato diversion program. On February 13, 1979, (44 FR 9371) the regulation was amended to provide for making 50 percent of the payment to potato growers prior to determining adequate pasturing of livestock rather than making full payment after such determination. This amendment adds definition of adequate pasturing to clarify the criteria under which USDA determines whether potatoes were properly utilized for livestock

feed, after dehydration through a process of alternate freezing and thawing, in accordance with program requirements.

This action is fully consistent with the original Impact Analysis Statement issued on November 17, 1978, and does not otherwise alter the conclusions discussed therein. Furthermore, in view of the short time period during which this program is being conducted, it is necessary that any amendments to the regulations be made effective as soon as possible. Accordingly, Dr. Donald L. Houston, Acting Administrator, Food Safety and Quality Service, has determined that compliance with the notice and public procedure provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest and that it is not possible to publish this regulation in proposed form and allow 60 days for public comment in accordance with the provisions of Executive Order 12044 (43 FR 12661, March 24, 1978).

Accordingly, § 2880.13(c)(3) of 7 CFR, chapter XXVIII is amended by adding the following at the end thereof:

§ 2880.13 Methods of feeding.

(c) ***

(3) *** Adequate pasturing will be considered to have occurred when potatoes have been grazed or consumed to the extent little or no feed value remains.

(i) Consideration shall be given to evidence that reasonable numbers of livestock had ample time to consume the edible potatoes as determined through actual counts of livestock or visual remains thereof—tracks, droppings, pasture growth, etc.

(ii) In the event potatoes remain after pasturing, evidence must exist that most of such potatoes are no longer edible because of normal spoilage due to weather conditions, spreading, damage, trappings, droppings, etc. The range of losses from such causes may be expected to be from 25 percent to 50 percent of the potatoes originally spread. In case of greater loss, documentation satisfactory to ASCS must be provided to establish the cause of such loss.

(Sec. 32, 49 Stat. 774, as amended; (7 U.S.C. 612c))

Done at Washington, D.C., on March 14, 1979.

DONALD L. HOUSTON,
Acting Administrator,
Food Safety and Quality Service.

[FR Doc. 79-8368 Filed 3-19-79; 8:45 am]

[3410-02-M]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This section establishes eligibility requirements and procedures for nominating the public member on the Cranberry Marketing Committee established under marketing Order No. 929.

EFFECTIVE DATE: March 20, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: Notice was published in the March 2, 1979, issue of the FEDERAL REGISTER (44 FR 11785) that consideration was being given to a proposal by the Cranberry Marketing Committee, established under the marketing agreement and Order No. 929, both as amended (7 CFR Part 929; 43 FR 29764), regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. This is a regulatory program effective under the applicable provisions of the Agricultural

Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The notice provided that all written data, views, or arguments in connection with the proposal be submitted not later than March 13, 1979. No comments were received. This action has not been determined significant under the USDA criteria for implementing Executive Order 12044.

Section 929.20 of the amended order specifies that the Cranberry Marketing Committee, consisting of seven industry members and alternates, may be increased by one public member and alternate nominated by the committee and selected by the Secretary. This section further provides that the committee, with the approval of the Secretary, shall prescribe qualifications and the procedure for nominating the public member and alternate.

These eligibility requirements specify that the public member shall not represent an agricultural interest and shall not be financially interested in or associated with the production, processing, financing or marketing of cranberries. These provisions also provide that public members should attend committee activities regularly and familiarize themselves with the background and economics of the cranberry industry. These provisions further specify that the public member and alternate shall serve two-year terms of office which coincide with the term of industry members of the committee. The rule specifies a procedure to secure qualified candidates for the public member and alternate member positions and provides that the names of persons nominated by the committee for such positions be submitted to the Secretary.

After consideration of all relevant matter presented, including the proposal set forth in the aforesaid notice, the recommendations by the Cranberry Marketing Committee, and other available information, it is hereby found that amendment of the rules and regulations (Subpart — Rules and Regulations; 7 CFR 929.101 et. seq.) an hereafter set forth, is in accordance with the provisions of the order and will tend to effectuate the declared policy of the act. Therefore, said rules and regulations are hereby amended by adding a new § 929.160 to read as follows:

§ 929.160 Public member eligibility requirements and nomination procedures.

(a) Public member and alternate member candidates shall not represent an agricultural interest and shall not have a financial interest in, or be associated with the production, processing, financing, or marketing of cranberries.

(b) Public member and alternate member candidates should be able to

devote sufficient time to attend committee activities regularly and to familiarize themselves with the background and economics of the cranberry industry.

(c) Names of candidates together with evidence of qualification for public membership on the Cranberry Marketing Committee shall be submitted to the committee at its business office, 147 Everett Street, or P.O. Box 800, Middleboro, MA 02346.

(d) Questionnaires shall be sent by the committee to those persons submitted as candidates to determine their eligibility and interest in becoming a public member.

(e) The names of persons nominated by the committee for the public member and alternate positions shall be submitted to the Secretary with such information as deemed pertinent by the committee or as requested by the Secretary.

(f) Public members shall serve a two-year term which coincides with the term of office of industry members of the committee.

It is hereby found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the Cranberry Marketing Committee recommended the rule to establish eligibility requirements and procedures for nominating the public member on this committee and this recommendation was contained in a notice of proposed rulemaking published in the March 2, 1979, issue of the FEDERAL REGISTER to which no comments were received, and (2) the committee plans to meet on March 20, 1979, to consider nomination of the public member and alternate in accordance with the prescribed procedure.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: March 16, 1979.

D. S. KURYLOSKI,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-8589 Filed 3-19-79; 8:45 am]

[6450-01-M]

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Administrative Procedures Regarding Applications for Exception Amendments

AGENCY: Department of Energy, Office of Hearings and Appeals.

ACTION: Final rule.

SUMMARY: This rule adopts amendments to the Department of Energy's administrative procedure regulations regarding Applications for Exception. The purpose of these amendments is to revise the procedures governing the exceptions process so as to provide a fuller administrative review of the issues raised in each Application for Exception and to afford interested parties a greater opportunity for comment during the consideration of the Application. After issuance of a Proposed Decision and Order, aggrieved or interested persons will be able to submit written comments and relevant evidence prior to the issuance of an order in final form. The Office of Hearings and Appeals will convene evidentiary hearings when they are appropriate and will provide an opportunity for oral argument as a matter of right. Limitations are placed on *ex parte* contacts after the issuance of a Proposed Decision and Order.

EFFECTIVE DATE: Upon the date of publication with respect to all proceedings involving Applications for Exception filed after that date. Ordinarily, the Interim Regulations published in 42 FR 47210 (September 20, 1977) will apply to the proceedings involving previous Applications. However, the Office of Hearings and Appeals may apply these regulations to prior Applications in the interest of fairness and efficiency.

FOR FURTHER INFORMATION CONTACT:

George B. Breznay, Deputy Director, Office of Hearings and Appeals, Department of Energy, 2000 M Street, NW., Washington, D.C. 20461, Telephone: (202) 254-9681.

Peter B. Bloch, Assistant Director, Office of Hearings and Appeals, Department of Energy, 2000 M Street, NW., Washington, D.C. 20461, Telephone: (202) 254-8606.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Discussion of Comments.
- III. Additional Changes.

I. BACKGROUND

On September 14, 1977, the Federal Energy Administration issued a Notice

of Proposed Rulemaking concerning procedures governing Applications for Exception, 42 FR 47210 (September 20, 1977), 3 CCH Federal Energy Guidelines Par. 41,083 (1977). This notice and comment procedure was not legally required for rules of agency procedure. See 5 USC Sec. 553(b)(A) and Department of Energy Organization Act, Sec. 501 (CCH Federal Energy Guidelines Par. 10,332 (1978) at p. 10,330). The Notice was accompanied by an explanatory statement and by proposed regulations, which became effective on an interim basis on the date they were issued. Interested parties were afforded an opportunity to file written comments on or before October 4, 1977. Comments were submitted by 15 firms in the petroleum industry, four law firms and two trade associations.

The DOE has considered these comments and has reviewed its experience in utilizing the interim regulations. It has decided to make the changes described below and to issue final procedural regulations for its consideration of Applications for Exceptions. Therefore, except for the modifications indicated below, we have incorporated into this Notice by reference the findings and analysis set forth in the Notice of Proposed Rulemaking. The Office of Hearings and Appeals has decided not to issue in final form that portion of the proposed regulations relating to Part 303. Those interim regulations have been superseded by a Notice of Proposed Rulemaking issued by the DOE's Economic Regulatory Administration, 43 FR 53974 (November 17, 1978), 3 CCH Federal Energy Guidelines, Par. 64,003 (1978).

II. DISCUSSION OF COMMENTS

In general, comments on the proposed regulations supported FEA's effort to improve its procedures regarding applications for exception. Most criticism was limited to specific provisions of the proposed regulations and did not take issue with the general approach.

Several comments suggested that the FEA should have extended the period of time for receiving written comments. In this regard, we note that the original period of time in which comments were to be made was reasonable, and that the FEA and its successor agency, the DOE, have considered all of the comments which were received, including those comments received after October 4, 1977. We therefore believe that no formal extension of time was necessary.

A few firms contend that the proposed amendments represent an attempt on the part of the FEA to circumscribe the authority of the Federal Energy Regulatory Commission (FERC). This claim is without basis.

In the explanatory discussion that accompanied the proposed regulations, the FEA stated that under the new procedures "the scope of review on appeals may generally be limited to issues which were raised in the prior exception proceeding and which the parties contend were erroneously decided." 42 Fed. Reg. 47210 (emphasis added). FERC of course has authority to implement its own rules of procedures for handling appeals of exceptions decisions. These regulations consequently give FERC and reviewing courts the option to limit consideration of issues to those actually raised during the prior proceedings. (See *Lunday-Thagard*, FERC Docket No. RA78-1 (September 26, 1978).) It was never the intention of the Office of Hearings and Appeals to limit in any way the FERC's authority to reach its own conclusions regarding the proper scope of its review on appeal. Moreover, after careful review of the proposed regulations, we have been unable to discover any procedural provision which could reasonably be construed as impinging upon the FERC's authority to make such decisions.

The remainder of the comments which the DOE received address proposed changes in the procedures regarding Applications for Exception. A number of firms state that although the new procedures are more elaborate, they do not spell out in sufficient detail all of the processes which the DOE will utilize in considering applications for exception relief. Some firms, for example, suggest that the regulations should include more detailed provisions with regard to such matters as the right of persons to amend submissions which they have filed with the DOE. In contrast, other parties maintain that the new procedural regulations are too elaborate. It is evident that a balance between these positions must be struck, and we believe that the new procedures achieve a fair compromise between the need for specificity and the need to avoid unnecessary complexity.

Many commenting firms argue that the new procedures will unduly delay the implementation of exception relief. They point out that relief approved in a Proposed Decision and Order may not be contested or may be contested only to a limited extent. These firms suggest that the new procedures be implemented to provide a means whereby exception relief, or partial exception relief, can become effective before the DOE makes a final determination with regard to any objections to a Proposed Decision and Order. We agree that interim exception relief is appropriate under certain very limited circumstances. Although the interim regulations contain general provisions authorizing the approval

of interim relief, § 205.69A has been added to make the authority to grant interim relief explicit, in those unusual cases where public interest considerations strongly favor such an approach. It should also be noted that the new provision relating to interim exceptions is not intended to affect the DOE's authority to stay regulatory requirements pursuant to § 205.120 incident to its consideration of exception applications. In addition, there may be some cases, including extensions of exception relief that was previously granted, in which a special Decision and Order should be issued in order to expedite the entire exceptions process. This possibility is provided for in § 205.69C. Sections 205.69A and C each contain criteria governing when these exceptional procedures are applicable.

In a number of comments, it was further suggested that the DOE extend the time period within which a firm is permitted to file a Notice of Objection to a Proposed Decision and Order. This suggestion has not been accepted. A Notice of Objection is a summary type of filing and need only contain a very brief statement describing the manner in which the party filing the Notice would be aggrieved by the issuance of the proposed Order, and a statement that the party intends to establish that the proposed Order is erroneous in fact or law or is arbitrary or capricious. A person is afforded ten days from service of the Proposed Decision and Order in which to file such a Notice. If a person receives notice that a Proposed Decision and Order is issued only through the FEDERAL REGISTER, the person has thirteen days from the date of publication in which to file a Notice of Objection. We believe that this time period is sufficient to prepare and file a summary document of this type. If this time period were extended, the DOE's ability to provide exception relief promptly and to respond to emergency situations would be seriously affected.

A number of commenting firms point out technical corrections and modifications to the proposed new procedures which they feel are necessary in order to make these procedures more consistent with other provisions of the DOE Procedural Regulations. Some claim that the proposed regulations do not make clear how the provisions of Subpart A of Part 205, which apply to service and filing, will affect proceedings initiated under the new procedures regarding Applications for Exception. Section 205.61 provides suggested clarification. With respect to the filing of documents required under the new procedures, the general provisions of § 205.4(b) of Subpart A shall be fully applicable. All such documents sent by registered mail will

therefore be considered as having been filed upon mailing, and § 205.61 reflects this principle accordingly.

In response to other comments, § 205.69B of the final rule has been modified as well. It provides that appeals of exception decisions must be filed within 30 days of service, rather than issuance, of the DOE's Decision and Order. As a result of this modification, the new procedures will conform to former DOE Procedural Regulations with regard to the filing of appeals from DOE exception decisions.

III. ADDITIONAL CHANGES

In light of its experience in implementing the interim regulations, we have also decided to make a number of changes not expressly suggested in public comments. Section 205.59 has been added in order to provide a simple method for interested persons to participate in a proceeding. Ordinarily, a Notice of Intent to Participate should be filed if participation in a proceeding is sought. However, in cases in which there are many requests to participate, § 205.59 permits the DOE to limit participation consistent with the criteria specified in § 205.59(f), including consideration of the interest of persons in having representatives of their own choice.¹

Section 205.56 has been clarified to limit the number of aggrieved parties served with a Proposed Decision and Order to those with a direct and distinctive interest; others ordinarily will receive notice through publication of a notice in the FEDERAL REGISTER. Section 205.60 provides for the preparation of an Official Service List, which will specify who must be served and may prescribe specific methods of service. Section 205.62 now clearly specifies that a Statement of Objections must be accompanied by all documents intended to be introduced in support of the Statement, that a Statement may identify issues ripe for final determination and that the Statement may suggest appropriate deadlines for various stages of the proceeding.

When a person wishes to obtain or to introduce additional evidence, § 205.65 provides a process through

which a single Motion for an Evidentiary Proceeding may be filed instead of the separate motions referred to in the interim regulations. Pursuant to this Section, a person may seek additional documents, answers to specific questions (interrogatories), an opportunity to question a person under oath (deposition), or an evidentiary hearing. The section permits DOE to select a method for obtaining information which will be least burdensome for the participants and will cause the least delay.

Section 205.66 provides for a method by which confidential information submitted during an exception proceeding can be obtained by a party subject to a protective order. Parties to exception proceedings have noted that a reasoned response may be difficult or even impossible to prepare because essential information has been deleted from relevant materials because of its claimed confidentiality. Under the new section, the DOE may enable a party to obtain access to confidential information subject to a protective order which specifies the persons who should have access to the data, the uses to which the data may be put, and the sanctions which may be imposed for non-compliance with its provisions. A right to oral argument is provided by § 205.69. Section 205.69D defines the term Presiding Officer and clarifies the authority available to him to conduct fair, orderly and efficient proceedings. Section 205.69E explicitly prohibits certain *ex parte* contacts following the issuance of a Proposed Decision and Order.

Finally, the DOE has made a number of technical changes in the new procedures which are intended to clarify various provisions and to provide clear cross-references to sections of the regulations which affect exception proceedings.

In accordance with section 404 of the DOE Organization Act, the Federal Energy Regulatory Commission received a copy of the proposed rulemaking and has notified the Office of Hearings and Appeals that it has decided not to exercise its discretion to determine that the proposed regulations would significantly affect any function within its jurisdiction under sections 402(a)(1), (b), and (c)(1) of the DOE Act.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, Pub. L. 95-70; Department of Energy Organization Act, Pub. L. 95-91, as amended, Pub. L. 95-620; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 205 of Chapter II, Title 10 of the Code of Federal Regulations, is amended set forth below.

Issued in Washington, D.C., March 14, 1979.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1. The table of contents for Part 205 is amended by revising the entries for §§ 205.56 through 205.58 and by adding §§ 205.59 through 205.69E.

SUBPART D—EXCEPTION

Sec.	
205.56	Issuance of Proposed Decision and Order.
205.57	Publication of Proposed Decision and Order.
205.58	Notice of Objection.
205.59	Notice of Intent to Participate.
205.60	Official Service List.
205.61	Filing and Service Requirements.
205.62	Statement of Objections.
205.63	Response.
205.64	Motion for Evidentiary Proceeding.
205.65	Response to Motion for Evidentiary Proceeding.
205.66	Obtaining Confidential Information; Motion for Discovery and Protective Order.
205.67	Disposition of Motions.
205.68	Evidentiary Hearing.
205.69	Hearing for the Purpose of Oral Argument Only.
205.69A	Interim Decision and Order.
205.69B	Final Decision and Order; Appeal.
205.69C	Special Decision and Order Procedure; Waiver of FEDERAL REGISTER Notice.
205.69D	Presiding Officer; Deadlines; Limitations; Adverse Findings.
205.69E	Ex Parte Communications: Prohibition and Disclosure Requirement.

AUTHORITY: (Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, Pub. L. 95-70; Department of Energy Organization Act, Pub. L. 95-91, as amended, Pub. L. 95-620; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

2. Section 205.56, §§ 205.57 and 205.58 are rescinded and the following provisions are inserted in their place:

§ 205.56 Issuance of Proposed Decision and Order.

(a) After considering the submissions of the parties and other relevant information in the record of the proceeding, the Office of Hearings and Appeals ordinarily shall issue a Proposed Decision and Order with respect

¹ This provision is consistent with 5 U.S.C. Section 555, which permits the participation of interested persons to be limited when required for the orderly conduct of public business. The provision is also supported by *In re Air Crash Disaster at Florida Everglades on Dec. 29, 1972*, 549 F.2d 1006 (5th Cir. 1977); *Abrams v. Occidental Petroleum Corp.* 44 F.R.D. 543 (S.D.N.Y. 1968); *Feldman v. Hanley* 49 F.R.D. 48 (S.D.N.Y. 1969); *U.S. v. Reserve Mining Co.*, 56 F.R.D. 408 (D. Minn. 1972); *British Airways Board v. Port Authority of New York & New Jersey*, 71 F.R.D. 583 (S.D.N.Y. 1976); cf. *Natural Resources Defense Council v. Costle*, 561 F.2d 904 (D.C. Cir. 1977).

to the Application for Exception. The decision shall include a written statement of reasons setting forth the facts and law supporting the proposed order.

(b) The DOE shall serve a copy of the Proposed Decision and Order upon the applicant and, after modification to ensure the confidentiality of information protected from disclosure under 18 U.S.C. 1905 and 5 U.S.C. 552, on every person who submitted written comments in the prior proceeding or is known to have a direct and distinctive interest in the proceeding. A copy of the Proposed Decision and Order shall also be placed in the Public Docket Room of the Office of Hearings and Appeals.

§ 205.57 Publication of Proposed Decision and Order.

Except as provided in § 205.69C, the Office of Hearings and Appeals shall publish notice of issuance of a Proposed Decision and Order in the FEDERAL REGISTER. The notice shall specify the person to whom the Proposed Decision and Order was issued and the person's location. The notice shall also describe in general terms whether or not relief has been granted, the nature and time period of any proposed relief, and the products and geographical area involved. The notice shall state that any person wishing to participate in further proceedings involving the matter must file either a Notice of Objection or a Notice of Intent to Participate within ten days after service. Persons who have not been served with the Proposed Decision and Order shall be deemed to have been served three days after the required publication in the FEDERAL REGISTER.

§ 205.58 Notice of Objection.

(a) Any person who would be aggrieved by the issuance of the Proposed Decision and Order in final form may file a Notice of Objection. A Notice of Objection shall be filed in duplicate within 10 days after service of the Proposed Decision and Order and shall contain: (1) A brief statement describing the manner in which the person filing the Notice would be adversely affected should the proposed order become final, (2) a statement that the person intends to file a Statement of Objections in accordance with § 205.62, (3) a certification of the names and addresses of all persons served with the notice, and (4) a certification that the requirements of paragraph (c) of this section have been met. This Notice is intended to be brief and should not contain any confidential information. The DOE shall place a copy of the Notice in the Public Docket Room of the Office of Hearings and Appeals.

(b) An aggrieved party who fails to file a timely Notice of Objection shall be deemed to consent to the issuance of the proposed order as a final order and shall also be deemed to waive all appeal rights.

(c) A person filing a Notice of Objection shall serve a copy of the Notice on every other person who participated in prior proceedings through the submission of written comments.

(d) If no person files a timely Notice of Objection or if no person files a timely Statement of Objections, the Office of Hearings and Appeals may issue the Proposed Decision and Order in final form without conducting any further proceedings in the matter.

§ 205.59 Notice of Intent to Participate.

(a) Any person who would not be aggrieved by the issuance of the Proposed Decision and Order in final form but who nevertheless wishes to participate in any further proceedings in the matter must file a Notice of Intent to Participate within 10 days after service of the Proposed Decision and Order.

(b) A Notice of Intent to Participate should briefly state the person's interest in the exception proceeding and the particular aspects of the proceeding (e.g., oral argument, submission of briefs, or discovery) in which the person wishes to participate actively.

(c) The Office of Hearings and Appeals may request any person filing a Notice of Intent to Participate to file additional information describing in detail the person's interest in the proceeding and specifying the reasons why the person's participation in one or more stages of the proceeding would substantially contribute to the resolution of the issues involved. The request shall specify the time period within which a reply must be filed.

(d) After considering a Notice submitted pursuant to paragraph (b) of this section the Office of Hearings and Appeals may determine that a person is not a proper party or participant in the proceeding or that its participation shall be limited.

(e) Persons with similar interests may be ordered to file a plan indicating how their participation can be coordinated in the interest of fair and efficient proceedings. Such plans ordinarily must be filed within ten days of receipt of an order that they be filed. If a requested plan is inadequate or untimely, the Office of Hearings and Appeals may provide for lead counsel or for a common representative in appropriate cases. In making determinations under this section, the Office of Hearings and Appeals shall consider the interest of persons in having representatives of their own choosing, the need for an expeditious resolution of the issues, the complexity of the

issues, the number of persons involved and the degree of similarity of the interests of the persons seeking to participate.

(f) The purpose of a Notice of Intent to Participate is to express the desire of the person filing the document to play an active role in one or more aspects of a proceeding to resolve arguments presented in Statements of Objections. Consequently, if no Statements of Objections are filed in a proceeding, it is likely that the Proposed Decision and Order will be issued in final form without further proceedings. Under those circumstances pending Notices of Intent to Participate will become moot.

§ 205.60 Official Service List.

Following its receipt of Notices of Objection and its consideration of Notices of Intent to Participate, the Office of Hearings and Appeals shall establish an Official Service List for the proceeding. The Official Service List shall specify the persons who must be served during all or certain aspects of the proceeding and may make special provisions for methods of service that the Office of Hearings and Appeals considers in its discretion to be appropriate. The List may be revised at any time during the proceeding.

§ 205.61 Filing and Service Requirements.

(a)(1) Statements of Objections to a Proposed Decision and Order, Responses to such Statements, and any motions or other documents filed in connection with a Proposed Decision and Order shall meet the requirements of § 205.9 and shall be filed with the Office of Hearings and Appeals in accordance with § 205.4. Documents properly mailed pursuant to § 205.4(b) will be considered to be filed upon mailing. Unless otherwise specified, any participant may file a response to a motion within ten days of service.

(2) All documents shall be filed in duplicate, unless they contain confidential information, in which case they must be filed in triplicate.

(3) If a claim is made that a portion of a document contains confidential information, that information must be deleted from two of the three copies of that document which are filed. One copy from which confidential information has been deleted will be placed in the Office of Hearings and Appeals Public Docket Room.

(b) With respect to any filing under this section, the person filing the document shall serve each person on the Official Service List and shall notify the person of the period of time in which a response or comment may be filed. Service shall be made in accordance with § 205.7 and may also be made by deposit in the regular United

States mail, properly stamped and addressed, when accompanied by proof of service consisting of a certificate of counsel or an affidavit of the person making the service. If any filing contains information considered to be confidential, a person may serve copies with the allegedly confidential information deleted upon all persons on the Official Service List.

(c) Any filing made under this section shall include a certificate of service, which includes the date and manner of service for each person on the Official Service List.

§ 205.62 Statement of Objections.

(a) A person who has filed a Notice of Objections shall file a Statement of Objections to the issuance in final form of the Proposed Decision and Order. A Statement of Objections must be filed within 30 days after service of the Proposed Decision and Order.

(b) The Statement of Objections shall specify particular findings of fact or conclusions of law that are contested, set forth alternative findings, and state how the Proposed Decision and Order should be modified to meet these contentions.

(c) The Statement shall include a discussion of all relevant authorities which support the position asserted, including statutes, regulations, rulings, interpretations, previous decisions of DOE or its predecessor agencies and court decisions. All available documents that are not already included in the record of the proceeding and that are intended to be introduced in support of the Statement shall be attached and shall be discussed in the Statement.

(d) The Statement may identify issues for immediate final determination on the ground that the issues can be resolved by application of the law to facts which are not contested.

(e) The Statement may suggest deadlines which may be adopted by the Office of Hearings and Appeals for the purpose of expediting the proceeding.

(f) A person must file a Statement of Objections on a timely basis in order to exhaust administrative remedies.

§ 205.63 Response.

(a) Any person on the Official Service List may file a Response to a Statement of Objections within 15 days after service of the Statement of Objections to which it is addressed. A Response shall clearly specify which particular factual or legal contentions set forth in the Statement are disputed.

(b) The Response shall conform to all the requirements applicable to Statements of Objections under § 205.62(c) and may discuss the subjects referred to in § 205.62 (d) or (e).

§ 205.64 Motion for Evidentiary Proceeding.

(a) If material factual issues remain in dispute after all Statements of Objections and Responses have been filed, the Director of the Office of Hearings and Appeals or his designee may issue an Order establishing a mechanism for resolving these issues. The preferred method of resolving disputed factual issues shall be by the submission of additional written documents, including affidavits. Next in order of preference shall be a requirement that a party or participant submit a response to written questions of a party, a participant or the Office of Hearings and Appeals (interrogatories). Next in order of preference shall be a requirement that a witness testify under oath, subject to cross-examination and for the record, but without a hearing officer present (deposition). Last in order of preference shall be the convening of an evidentiary hearing in which witnesses shall testify under oath, subject to cross-examination, for the record and in the presence of a Presiding Officer (evidentiary hearing.)

(b) A party or participant seeking the issuance of the Order referred to in paragraph (a) of this section shall file a Motion for Evidentiary Proceeding at the same time it files its Statement of Objections or Response.

(c) A Motion for Evidentiary Proceeding must demonstrate that the requested methods for obtaining information (i.e., submissions of additional written material, interrogatories, depositions or evidentiary hearing) are consistent with the order of preference specified in this section. For example, a motion requesting an evidentiary hearing should specify the type of witness or witnesses whose testimony is sought, the scope of questioning that is anticipated, the relevance of the questioning to the proceeding and the reasons why the information to be provided through the testimony could not be provided through another, more preferred method. A motion must identify the information requested with sufficient specificity to permit a reasoned decision concerning the relevance and materiality of the requested information and the appropriateness of the requested method for obtaining it. A motion may be summarily denied for lack of sufficient specificity, because it would place an undue burden on another person or the DOE or because it will cause undue delay.

(d) A Motion for Evidentiary Proceeding must be served on any person from whom information is sought, even if service is not otherwise required by this subpart.

§ 205.65 Response to Motion for Evidentiary Proceeding.

Any person who wishes to respond to a Motion for Evidentiary Proceeding must do so within ten days of service. The response must specify the particular parts of the motion that are disputed and may argue that the requested information is irrelevant or immaterial, that different methods for obtaining the requested information are more appropriate, or that limitations should be imposed to mitigate an undue burden or avoid delay.

§ 205.66 Obtaining Confidential Information; Motion for Discovery and Protective Order.

(a) A participant who has unsuccessfully attempted in writing to obtain information that another person claims is confidential may file a Motion for Discovery and Protective Order. Such a motion shall meet the requirements of § 205.64 and shall specify the particular confidential information that the movant seeks and the reasons why the information is necessary for the movant to present its position adequately. A copy of a written request for information, a certification concerning when and to whom it was mailed and a copy of the response, if any, shall be appended to the motion. The motion shall give the possessor of the information notice that a Response to the motion may be filed within ten days after service of the motion. The motion shall specify the safeguards, if any, that should be imposed if the information is ordered to be released.

(b) A Response to a Motion for Discovery and Protective Order shall clearly specify particular factual and legal matters that are disputed, including contentions concerning appropriate safeguards to be imposed if the information is ordered to be released.

(c) The Presiding Officer may, in his or her discretion, order that some or all of the information be released and may make some or all of the information released subject to a Protective Order.

§ 205.67 Disposition of Motions.

(a) In considering motions filed by the parties, the Director of the Office of Hearings and Appeals or his designee may order the submission of additional information and conduct conferences or hearings either in response to requests by the parties or on his own initiative. These proceedings may be held pursuant to § 205.171, § 205.172, § 205.173, § 205.68 or § 205.69, or pursuant to special rules promulgated for this purpose by the Presiding Officer.

(b) In reaching a decision with respect to a motion filed under this subpart, the Office of Hearings and Appeals shall consider all relevant information.

mation in the record. A motion may be decided by the issuance of an Order either during the course of a hearing or conference in which an official transcript is maintained or in a separate written Decision and Order.

(c) An Order of the Office of Hearings and Appeals issued under this section is an Interlocutory Order which is subject to further administrative review or appeal only upon issuance of the Decision and Order referred to in § 205.69B.

§ 205.68 Evidentiary Hearing.

(a) If an Order is issued granting a Motion for an Evidentiary Hearing, in whole or in part, the Order shall specify the parties to the hearing, any limitations on the participation of a party, and the issues of fact to be considered at the evidentiary hearing. The Order may also require parties that have adopted similar positions to consolidate their presentations pursuant to a joint plan as specified in § 205.59(e). If the Office of Hearings and Appeals determines that requiring the filing of a plan would cause undue delay, it may dispense with that requirement of § 205.59(e).

(b) All evidentiary hearings convened pursuant to this Subpart shall be conducted by the Director of the Office of Hearings and Appeals or his designee. At any evidentiary hearing the parties shall have the opportunity to present material evidence that directly relates to a particular issue of fact set forth for hearing. The Presiding Officer shall afford the parties an opportunity to cross examine all witnesses concerning disputed material facts or opinions. The Presiding Officer may administer oaths or affirmations, rule on objections to the presentation of evidence, receive relevant material, require the advance submission of documents offered as evidence, rule on any motion to conform the Proposed Decision and Order to the evidence presented, rule on motions for continuance, dispose of procedural requests, determine the format of the hearing, modify any order granting a Motion for Evidentiary Hearing, direct the written motions, documents or briefs be filed with respect to issues raised during the course of the hearing, ask questions of witnesses, issue subpoenas, and otherwise regulate the conduct of the hearing. The Presiding Officer may take reasonable measures to exclude duplicative material from the hearing and may place appropriate limitations on the number of witnesses that may be called by a party. The presiding officer may also require that evidence be submitted through affidavits or other documents if the direct testimony of witnesses will unduly delay the orderly progress of the hearing or would not substantially

contribute to resolving the issues involved in the hearing. The provisions of § 205.8 which relate to subpoenas and witness fees shall apply to any evidentiary hearing, except that the review procedures set forth in §§ 205.8(h) (2), (3), and (4) shall not apply.

§ 205.69 Hearing for the purpose of oral argument only.

(a) A person who has filed a Statement of Objections or a Response is entitled, upon timely request, to a hearing for the presentation of oral argument with respect to the Proposed Decision and Order. A request for oral argument will be considered timely if it is filed at the same time the Statement of Objections or the Response is filed.

(b) The Office of Hearings and Appeals may, upon motion or on its own initiative, convene a hearing for the purpose of receiving oral argument with respect to a Proposed Decision and Order. The Office of Hearings and Appeals may also require that parties participating in an oral argument file appropriate briefs, outlines or documents prior to the hearing.

(c) If an evidentiary hearing is convened and a hearing for oral argument has been requested, the Office of Hearings and Appeals shall determine whether the hearing for oral argument shall be held in conjunction with the evidentiary hearing or at a separate time.

(d) A hearing for the purpose of receiving oral argument will generally be conducted only after the issues involved in the proceeding have been delineated and after all written material requested by the Office of Hearings and Appeals has been submitted. The Presiding Officer may, however, require further written submissions in support of any position advanced or issue raised at the hearing, and may allow responses to any such submissions.

(e) In conducting a hearing for the purpose of oral argument the Presiding Officer may limit or extend the length of arguments, consolidate parties, make rulings concerning the relevance of argument, question the participants, determine the format of the hearing, make other procedural rulings and otherwise regulate the conduct of the hearing.

§ 205.69A Interim Decision and Order.

(a) Notwithstanding any other provisions of this Subpart, the Director of the Office of Hearings and Appeals or his designee may, upon motion or on his own initiative, issue an Interim Order for the purpose of granting exception relief during the pendency of an exception proceeding. Such an order may be issued only after a Pro-

posed Decision and Order has been issued and only if the Office of Hearings and Appeals determines that public interest considerations strongly favor the approval of an interim exception pending the completion of the procedures ordinarily required by this Subpart. In making that determination the Office of Hearings and Appeals shall consider the following factors:

(1) The probability that exception relief will ultimately be granted;

(2) The harm an applicant is likely to incur unless exception relief is approved immediately; and

(3) The harm other persons are likely to incur if the Interim Order is issued.

(b) An Interim Decision and Order issued pursuant to this Section shall be served promptly on all persons on the Official Service List. The Decision shall specify the facts and law on which it is based, including a discussion of the factors listed in paragraph (a) of this section.

(c) Any person aggrieved by an Interim Decision and Order may file an Application for a Stay under Subpart I with the Office of Hearings and Appeals.

(d) An Interim Order issued under this section is interlocutory in nature and is therefore subject to appeal only upon issuance of the Decision and Order referred to in § 205.69B.

§ 205.69B Final Decision and Order; Appeal.

(a) After considering the entire record, the Director of the Office of Hearings and Appeals or his designee shall issue a final Decision and Order. The Decision shall state the factual and legal basis for the Order. In cases considered to be clearly controlled by prior Decisions of the Office of Hearings and Appeals, or a court, the Decision may be limited to a summary statement of the reasons for the Decision and a citation to precedent.

(b) The Order shall provide that any person whose interest is adversely affected by a denial of exception relief may appeal to the Federal Energy Regulatory Commission, in accordance with the Commission's regulations, within 30 days after the issuance of the Decision and Order.

(c) In order to exhaust administrative remedies in the case of a denial of exception relief, a person must file a timely appeal under paragraph (b) of this section and await the issuance of a final order in the appeal proceeding.

§ 205.69C Special Decision and Order Procedure; Waiver of Federal Register Notice.

(a) When the circumstances warrant, the Office of Hearings and Appeals may issue a Final Decision and

Order pursuant to § 205.69B without first issuing a Proposed Decision and Order pursuant to § 205.56 after considering the following factors:

(1) The thoroughness with which issues have already been argued in the proceeding;

(2) The nature of the evidence that has already been presented in the proceeding and the likelihood that additional useful evidence would be submitted subsequent to the issuance of a Proposed Decision and Order;

(3) The need for a expeditious determination of the issues presented;

(4) The financial resources with which existing parties can participate effectively in continued proceedings;

(5) Whether an exception was previously granted or denied to the applicant for the same reasons advanced in the present proceeding; and

(6) The public interest.

(b) In the alternative, the Director of the Office of Hearings and Appeals or his designee may, after considering the factors referred to in paragraph (a) of this section issue a Proposed Decision and Order but waive the notice requirements specified in § 205.57.

§ 205.69D Presiding Officer; Deadlines; Limitations; Adverse Findings.

(a) The Presiding Officer referred to in this Subpart shall be the Director of the Office of Hearings and Appeals or his designee.

(b) The Presiding Officer may exercise any of the authority and issue any of the orders specified in this Part.

(c) The Presiding Officer may permit any document or submission filed under this subpart, other than an appeal to FERC, to be amended or withdrawn after it has been filed or to be filed within a time period different from that specified in this subpart. The Presiding Officer may issue ancillary Orders, reconsider any determination, or make any ruling or determination deemed necessary to ensure that the proceedings specified in this subpart are conducted in an appropriate manner and are not unduly delayed.

(d) The Presiding Officer may determine that it is appropriate to make findings of fact adverse to the interests of any party or participant who violates an order, fails to make a timely filing or interferes with the orderly conduct of the proceedings.

(e) After notifying a participant or party of proposed action under paragraph (d) of this section and providing an opportunity for oral argument, the Presiding Officer may limit further participation in a proceeding by that person or his representative for disruptive or dilatory conduct or for a failure to participate actively.

(f) The Presiding Officer may issue subpoenas and special report orders

with respect to any matter under his jurisdiction pursuant to this subpart.

(g) The Presiding Officer also may specify the time and place for hearings or for other methods of obtaining information specified in § 205.64, 205.66, 205.68, 205.69 or in other provisions of this subpart.

(h) The Presiding Officer may issue rulings or orders which are appropriate to conduct a fair, orderly or efficient proceeding, including the authority to administer oaths and affirmations, to regulate the conduct of the parties, to rule on the admissibility or form of submission of evidence, to modify orders, to direct the submission of written evidence or briefs, to place or remove limitations on the presentations of the parties, to provide for recesses or postponements, to determine that specified issues be resolved based on written submissions rather than on testimony and otherwise to provide for fair, orderly or efficient hearings.

§ 205.69E Ex Parte Communications: Prohibition and Disclosure Requirement.

(a)(1) Following the issuance of a Proposed Decision and Order, no person not employed by the Office of Hearings and Appeals shall engage in an *ex parte* communication with an officer or employee of the Department of Energy concerning a pending Application for Exception. This restriction does not apply to communications authorized by §§ 205.56 through 205.69D or exempted by this section.

(2) Following the issuance of a Proposed Decision and Order, any person communicating with an officer or employee of the Department of Energy concerning a pending exception proceeding other than in the manner specified in §§ 205.56 through 205.69D shall inform the DOE official that the communication relates to a pending exception matter.

(b) Communications which consist of a request for status reports, an inquiry as to procedures or a submission of confidential data pursuant to § 205.61 are not subject to the restrictions set forth in paragraph (a) of this section. In addition, the prohibition contained in paragraph (a)(1) of this section does not apply to communications with officers or employees of the DOE who are not or will not be involved either directly or indirectly in the analysis of the exception application or the decision reached with respect to the matter.

(c) If any communication occurs that violates the provisions of this section, the Office of Hearings and Appeals shall promptly make the substance of the communication available to the public and shall notify in writing all participants in the affected proceeding. The Office of Hearings and

Appeals may also take any other appropriate action to mitigate the adverse impact on any person whose interest may be affected by the *ex parte* contact, including the determination of issues adversely to the interest of the offending party or the issuance of an adverse Decision and Order.

§ 205.51 [Amended]

3. Section 205.51(b) is amended by deleting the phrase "under this subpart" and substituting "prior to the issuance of a Proposed Decision and Order"; in addition, the following sentences are added to the end of that subsection:

Section 205.61 governs claims for the confidential treatment of information after the issuance of a Proposed Decision and Order. All documents shall be filed in duplicate, unless they contain confidential information, in which case they must be filed in triplicate, with all confidential information deleted from two of the copies.

[FR Doc. 79-8318 Filed 3-19-79; 8:45 am]

[6450-01-M]

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1979 Interpretations of the General Counsel

AGENCY: Department of Energy.

ACTION: Notice of Interpretations.

SUMMARY: Attached are the Interpretations issued by the Office of General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the period February 1, 1979, through February 28, 1979. Appendix B identifies those Requests for Interpretation which have been dismissed during the same period.

FOR FURTHER INFORMATION CONTACT:

Diane Stubbs, Office of General Counsel, Department of Energy, 12th and Pennsylvania Avenue, NW., Room 1121, Washington, D.C. 20461, (202) 633-9070.

SUPPLEMENTARY INFORMATION: Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the FEDERAL REGISTER in accordance with the editorial and classification criteria set forth in 42 FR 7923 (February 8, 1977), as modified in 42 FR 46270 (September 15, 1977).

These Interpretations depend for their authority on the accuracy of the factual statement used as a basis for the Interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom Interpretations are addressed and other persons

upon whom Interpretations are served are entitled to rely on them (§ 205.85(c)). An Interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the Interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). The Interpretations published below are not subject to appeal.

Issued in Washington, D.C., March 9, 1979.

EVERARD A. MARSEGLIA, Jr.,
Acting Assistant General Counsel
for Interpretations and
Rulings, Office of General
Counsel.

APPENDIX A.—Interpretations

No.	To	Date	Category	File No.
1979-03	Devon Corp., Eason Oil Co.	Feb. 2	Price	A-175.
1979-04	Standard Oil Co. (Indiana)	Feb. 21	Allocation	A-363

INTERPRETATION 1979-3

To: Devon Corporation, Eason Oil Company.

Regulations Interpreted: 10 CFR 212.31, 212.83, 212.161, and 212.168(b).

Code: GCW-PI—Part 212, Subparts E and K; def. of Crude Oil, Firm, Natural Gas Shrinkage, and Refiner.

FACTS

Devon Corporation (Devon) owns interests in several gas plants which extract natural gas liquids (NGL's) from natural gas and/or fractionate NGL's into natural gas liquid products (NGLP's), such as propane, butane and natural gasoline. Devon does not operate any of these plants, but owns a portion of the NGL's and NGLP's produced by these plants, although they are marketed in Devon's behalf by other firms.

Eason Oil Company (Eason) is the sole owner and operator of a gas plant located in Crescent, Oklahoma. In addition, Eason owns minority interests in a number of other gas plants, none of which Eason operates. Eason owns a portion of the NGL's and NGLP's produced by these plants.

Devon is, therefore, a "gas plant owner" and Eason is a "gas plant operator" as those terms are defined in 10 CFR 212.162. Both firms are subject to the Mandatory Petroleum Price Regulations, 10 CFR Part 212, in their sales of covered products, including NGL's and NGLP's.

Devon and Eason (hereinafter the "parties") each also owns a 25 percent interest in a plant complex located in Calhoun and Dubach, Louisiana. The remaining 50 percent ownership interest in this plant is held by Kerr-McGee Corporation (Kerr-McGee), which operates the plant. The plant processes wet natural gas and refines condensate to produce NGL's, NGLP's, motor gasoline, kerosene and gas oil, which are owned by Devon, Eason, Kerr-McGee and the various producers of the natural gas and condensate processed by the plant. All of the products produced by the plant that are owned by Devon and Eason are marketed in their behalf by Triangle Refineries, Inc. (Triangle), a wholly owned subsidiary of Kerr-McGee. As a general rule, these three firms operate under an arrangement whereby Tri-

angle remits to Devon and Eason a fixed percentage of the sales price for their products. Triangle also markets petroleum products, including NGL's and NGLP's, produced at the plant for the producers of the natural gas and condensate that do not take the resulting petroleum products in kind. The owners of the plant charge the producers a processing fee or take a percentage of the products as compensation for the processing services.

The input to the facilities located at Calhoun and Dubach consists of natural gas and condensate. The natural gas and some of the condensate is owned by the various natural gas and condensate producers, including Devon, Eason and Kerr-McGee. Some of this condensate did not exist in liquid form in underground reservoirs but condensed as a result of a reduction in pressure and temperature to ambient levels. Lease condensate is separated by the producers at the wellhead by means of lease separators. Other condensate fed into the Dubach facilities is purchased by the plant owners, Devon, Eason and Kerr-McGee. The remainder of the condensate is physically separated from the wet gas at the inlets to the Calhoun/Dubach plant.

The facilities at Calhoun mechanically separate condensate from wet gas and extract NGL's from the gas by means of refrigerated oil absorption. The resulting liquids, still owned by the producers (subject to the plant owners' processing fee rights), are then pumped to the facilities at Dubach for further processing.

The facilities at Dubach process the liquids pumped from the Calhoun facilities, as well as purchased condensate delivered by truck and natural gas and condensate pumped from the immediate Dubach area. Part of the Dubach facilities are similar to those at Calhoun and basically consist of mechanical separators and refrigerated oil absorption systems, including high and low pressure oil stills, designed to mechanically separate condensate and extract NGL's from wet gas. The Dubach facilities also fractionate these liquids into NGLP's. In ad-

¹The residue gas remaining after processing at both Calhoun and Dubach is owned by the producers.

dition, the Dubach facilities distill and heat condensate and NGL's and process them through fractionation towers to produce naphtha, kerosene and gas oil. The kerosene is sold as a finished product, and the gas oil (residuum) is sold to refiners for use as a feedstock. The naphtha is charged to a reformer or platforming unit that changes the molecular structure of the naphtha and converts it to platformate. The platformate is then blended with natural gasoline and other products fractionated in various parts of the Dubach facilities to produce regular and premium-grade motor gasoline, which is sold as a finished product.

Kerr-McGee, as operator, has filed Form No. 6-1334 for the Calhoun/Dubach plant with the Bureau of Mines, Department of the Interior. In these filings, Kerr-McGee has identified the plant as a "reforming" refinery, with an operable capacity for crude oil distillation of barrels per day and for catalytic reforming of barrels per day.² With respect to operable capacity, the instructions to the form include "lease condensate" and "natural gas plant liquids" processed, but exclude components blended by mechanical means to finished products. The Federal Energy Administration (FEA), a predecessor of the Department of Energy (DOE), also listed the plant as a crude oil refinery operated by Kerr-McGee for purposes of the Refinery Capacity List of September 2, 1977. The plant has been listed as an eligible refinery on the DOE's Refiner's Buy/Sell List, which entitles refineries without adequate access to imported crude oil to purchase domestic crude oil from specified refiner-sellers, pursuant to 10 CFR 211.65.³

As operator of the plant, Kerr-McGee has also included a portion of the plant's feedstock in its "crude oil runs to stills" for purposes of the DOE's domestic crude oil allocation ("entitlements") program.⁴ 10 CFR 211.67.

Devon and Eason seek an Interpretation that the Calhoun/Dubach plant is not a crude oil refinery but a "gas plant," as that term is defined in 10 CFR 212.162. If it is determined that the plant refines crude oil, the parties seek an Interpretation that they are nevertheless not "refiners" of "crude oil," as those terms are defined in 10 CFR 212.31. Under either of the requested interpretations, the parties claim that they would be subject only to 10 CFR Part 212, Subpart K, in their sales of covered products, and

²January 1, 1974 Report, Sections I-II.

³Devon and Eason have claimed that the Calhoun/Dubach plant was an eligible refinery only with respect to condensate purchased as a feedstock by the owners.

⁴Lease condensate run into a distillation unit by a refiner may be includable as "crude oil runs to stills" for purposes of the entitlements program, if all the relevant requirements of Part 211 are met.

not to Subpart E. The parties have assumed that if they were considered to be refiners of crude oil, they could be required to pass through all increased costs incurred since May 15, 1973, in the sale of their covered products, including NGL's and NGLP's, on a consolidated, firm-wide basis⁹ according to the refiner price formula, 10 CFR 212.83. However, the parties have allocated increased shrinkage costs for their NGL's and NGLP's on a plant-by-plant or stream-by-stream basis⁶ according to the method set forth in 10 CFR 212.168(b), rather than on a firm-wide basis. Requiring those costs to be determined on a firm-wide basis under Subpart E would thus subject the parties to substantial potential liabilities for overcharges as a result of failure to comply with the equal application rule of the refiner price formula, 10 CFR 212.83(h).

ISSUES

1. Are Devon and Eason refiners of crude oil by virtue of their interests in the Calhoun/Dubach plant, for purposes of 10 CFR Part 212?

2. If Devon and Eason are refiners of crude oil for purposes of 10 CFR Part 212, may they elect to determine and pass through any increased shrinkage costs that they incur in sales of NGL's and NGLP's on a stream-by-stream or plant-by-plant basis in accordance with 10 CFR 212.168(b)?

DISCUSSION

For the reasons discussed below, we have concluded that Devon and Eason are refiners of crude oil for purposes of 10 CFR Part 212 by virtue of their interests in the Calhoun/Dubach plant. As crude oil refiners that also refine liquid hydrocarbons from oil and gas field gases, the parties must determine May 15, 1973 selling prices and increased costs for their NGL's and NGLP's produced in gas plants in accordance with Subpart K, but must determine their maximum lawful selling prices for all covered products under Subpart E. The parties must determine their maximum lawful selling prices for their covered products, other than NGL's and NGLP's produced in gas plants, strictly in accordance with Subpart E. The equal application rule of the refiner price formula, set forth in 10 CFR 212.83, would thus generally require the parties to pass through increased shrinkage costs on a firm-wide basis, notwithstanding the provisions of 10 CFR 212.168(b).

The term "crude oil" is defined in 10 CFR 212.31 as:⁷

⁸Devon argues, however, that this requirement could apply only to crude oil refiners that are also gas plant operators, as suggested by the heading of 10 CFR 212.161(b)(2). Since Devon is not a gas plant operator, this argument would allow Devon to pass through increased shrinkage costs on a stream-by-stream or plant-by-plant basis. As an operator of a gas plant, Eason could not benefit from this argument.

⁹On February 1, 1978, Eason apparently changed the basis for reporting increased shrinkage costs from a plant-by-plant basis to a consolidated firm-wide basis.

⁷This definition has been amended a number of times, although in a manner that

a mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. "Crude oil" includes condensate recovered in associated or non-associated production by mechanical separators, whether located on the lease, at central field facilities, or at the inlet side of a gas processing plant. (Emphasis added.)

In the present case, the parties have stated that some of the condensate that is processed at the Calhoun/Dubach plant did not exist in liquid phase in underground reservoirs. However, the facts the parties have presented demonstrate that some of this condensate is separated from wet gas by mechanical separators. It therefore appears that a portion of the feedstock processed at the Calhoun/Dubach plant is "crude oil" under the DOE's pricing regulations. See, e.g., Ruling 1975-18, § 1a, 40 FR 55860 (December 2, 1975); see generally, *UPG, Inc.*, Interpretation 1978-35M, 43 FR 57589 (December 8, 1978).

The term "refiner" is defined in 10 CFR 212.31 as:

a firm (other than a reseller or retailer) or that part of such a firm which refines covered products or blends and substantially changes covered products, or refines liquid hydrocarbons from oil and gas field gases, or recovers liquefied petroleum gases incident to petroleum refining and sells those products to resellers, retailers, reseller-retailers or ultimate consumers. "Refiner" includes any owner of covered products which contracts to have those covered products refined and then sells the refined covered products to resellers, retailers, reseller-retailers or ultimate consumers.

Under this definition, by virtue of their interests in the Calhoun/Dubach plant, Devon and Eason are clearly refiners, not only of NGL's and NGLP's but also of other covered products.⁸ The parties own the cov-

does not affect this Interpretation. 40 FR 40818 (September 4, 1975); 40 FR 2795 (January 16, 1975); and 39 FR 12353 (April 5, 1974).

⁸See the definition of "covered products" in 10 CFR 212.31. This definition, too, has been amended a number of times, but not in a way that affects this Interpretation.

⁹Under the last sentence of the refiner definition in § 212.31, Devon and Eason would qualify as refiners under Part 212 even if they had no ownership interest in any refinery, so long as they contracted to have products refined at the Calhoun/Dubach plant and owned them prior to their first sale. The parties' contractual arrangements in reference to the plant fulfill those criteria as well. See Plant Complex Operating Agreement between Kerr-McGee and Southwest Gas Producing Company, Inc., effective January 1, 1972, that governs the operation of the Calhoun/Dubach plant.

¹⁰The authorities that the parties cite do not support their contention that the Calhoun/Dubach plant does not refine crude oil. For example, *Tristate Oil & Asphalt Sales, Inc.*, Interpretation 1978-22, 43 FR 25079 (June 9, 1978), held that a processor is a refiner under 10 CFR Part 212, Subpart E, so long as the processing of the plant's feedstock substantially changes its form and produces a covered product. *Accord, The Independent Oil Compounds Association*,

ered products and sell them to third parties.⁹ These products are refined not only from natural gas but also from crude oil. The process by which they are produced is properly characterized as refining for purposes of this definition not only because NGL's and NGLP's are produced from condensate and natural gas, but also because the crude oil feedstock of the plant is substantially changed. This crude oil passes through fractionation towers to produce kerosene, gas oil and naphtha, and the molecular structure of the naphtha is changed to produce platformate, an ingredient that the plant subsequently blends with natural gasoline and other products to produce finished, high-octane motor gasoline. These processes constitute the refining of crude oil and cannot be fairly described as mere gas processing or blending as the parties contend.¹⁰ Moreover, inasmuch as the charac-

Interpretation 1978-33M, 43 FR 46520 (October 10, 1978). Characterizing the refining activities of the Calhoun/Dubach plant as mere "topping of condensate" does not preclude classifying part of the plant as a crude oil refinery for purposes of the Mandatory Petroleum Price Regulations, which are not restricted in their application to refined petroleum products produced in a large, sophisticated refinery. There is no requirement that a plant produce a specified number of different products or that these products all be sold for consumption without further processing in order for the plant to be considered a crude oil refinery under Subpart E. *General Crude Oil Co.*, 4 FEA ¶ 80,552 (October 22, 1976), rev'd, Civil No. 76-H-1108 (S.D. Texas, March 14, 1978), Fed. Energy Guidelines (CCH) ¶ 26,102, rev'd, 585 F.2d 508 (TECA 1978), also does not advance the parties' arguments that the Calhoun/Dubach plant is not a crude oil refinery. In that case, the FEA determined only that producing crude oil by means of *in situ* combustion (fireflooding) does not constitute the refining of crude oil. In contrast, there is no question here that the Calhoun/Dubach plant is a refinery, and as discussed above, there can be no doubt that part of the plant's feedstock is "crude oil" as defined in 10 CFR 212.31.

¹¹Devon has cited *American Petrofina, Inc.*, Interpretation 1978-31, 43 FR 29532 (July 10, 1978), and other cases in support of its request for an equitable interpretation that the Calhoun/Dubach plant is simply a gas plant. In this case, however, the plain meaning of the regulations is not unreasonable or repugnant to their purpose. Part 212, Subpart E provides refiners with a formula to determine the maximum lawful prices for the covered products produced in crude oil refineries. Subpart K was designed solely to deal with the unique problems of determining maximum lawful prices of NGL's and NGLP's produced from natural gas. This subpart does not, therefore, contain a refiner price formula for any covered products produced from crude oil. For example, Subpart K does not contain any provision for reflecting any increased costs of crude oil in a firm's maximum lawful selling prices. See, e.g., Notice of Proposed Rulemaking, 39 FR 32718 (September 10, 1974); and Notice of Final Rule, 39 FR 44407 (December 24, 1974). Thus, Subpart K is clearly unsuited for determining the maximum lawful selling prices of the covered products, including motor gasoline and NGLP's, which have been produced in part from crude oil at the Calhoun/Dubach plant.

terization of the Calhoun/Dubach plant as a crude oil refinery is within the plain meaning of the regulations and is not unreasonable or repugnant to their purpose, there is also no basis for the adoption of an equitable interpretation that the Calhoun/Dubach plant is not a refinery but a gas plant.¹¹

The conclusion that the Calhoun/Dubach plant refines crude oil¹² is also supported by its participation in the DOE's Buy/Sell Program, by Kerr-McGee's inclusion of the plant in its reports of crude oil refining capacity to the Bureau of Mines, and by the inclusion of part of the plant's input as "crude oil runs to stills" under the DOE's entitlements program.

Since Devon and Eason own the covered products that are refined at the plant, they are responsible for determining the maximum lawful selling prices for these products. The criteria for determining increased costs for the NGL's and NGLP's produced at the Calhoun/Dubach plant from natural gas are set forth in Subpart K. Subpart K pricing provisions apply only to the sale of NGL's and NGLP's produced in gas plants by processors that do not also refine crude oil; they do not apply to the sale of covered products produced by crude oil refiners. 10 CFR 212.81, 212.161. Devon and Eason, as refiners, must therefore determine their maximum lawful selling prices for all the covered products that they produce at the Calhoun/Dubach plant in accordance with the provisions of Subpart E.¹³ The cases the parties have cited holding that a firm is not necessarily a "refiner" even though it has an ownership interest in a refinery are inapposite, inasmuch as those cases involve unique problems encountered in determining a refiner's responsibilities under the entitlements program.¹⁴

¹¹This conclusion does not mean that the Calhoun/Dubach plant is exclusively a crude oil refinery. To the extent that it processes natural gas to produce NGL's and NGLP's, the plant is a "gas plant" as that term is defined in 10 CFR 212.162. Devon and Eason must determine increased costs for NGL's and NGLP's attributable to the processing of natural gas pursuant to Subpart K, but since Devon and Eason are crude oil refiners, they must determine their maximum lawful selling prices for all the covered products they sell pursuant to Subpart E. 10 CFR 212.161(b)(2).

¹²Subpart E also applies to sales of kerosene and gas oil by Devon and Eason that occurred when these were classified as "covered products" in 10 CFR 212.31. This conclusion is supported by *Kerr-McGee Corp.*, 4 FEA ¶ 80,577 (November 26, 1976) and 4 FEA ¶ 85,033 (November 12, 1976), which stated that Kerr-McGee must determine the maximum lawful selling prices of the motor gasoline, kerosene and gas oil produced by the Calhoun/Dubach plant in accordance with Subpart E, to the extent these are classified as "covered products."

¹³*E.g., Commonwealth Oil Refining Co.*, Interpretation 1977-45, 43 FR 1480 (January 10, 1978) (independent joint venture operating a petrochemical plant is not part of the same firm as a refiner owning an interest in the joint venture for purposes of reporting receipts of naphtha into Puerto Rico under 10 CFR 211.67(d)(5)(i) and (iv)); *Funding Systems Corp.*, 1 DOE ¶ 80,250 (May 6, 1978) (purchaser of refinery not a refiner for entitlements purposes where seller retains control of and financial risks

Crude oil refiners are subject to both Subparts E and K of Part 212. Section 212.161(b) describes the relationship between Subpart K and Subpart E in the following manner:

(b) *Relationship to other subparts.*—(1) *Gas plant operators.* Refiners that only refine liquid hydrocarbons from oil and gas field gases and do not refine crude oil shall determine their maximum lawful prices pursuant to this subpart K and are not also subject to subpart E.

(2) *Crude oil refiners which are also gas plant operators.*—(i) *General.* Refiners that refine liquid hydrocarbons from oil and gas field gases, and also refine crude oil, shall determine their May 15, 1973, selling prices and increased product and processing costs for natural gas liquids and natural gas liquid products produced in gas plants pursuant to this subpart, but shall determine their maximum lawful selling prices pursuant to Subpart E.

In view of the fact that Devon and Eason are both crude oil refiners with respect to the Calhoun/Dubach plant and refine liquid hydrocarbons (NGL's and NGLP's) from oil and gas field gases, they are required to determine their May 15, 1973 selling prices for the NGL's and NGLP's that they produce from natural gas and increased costs for those products in accordance with the provisions of Subpart K. With respect to the maximum lawful selling prices of all the covered products they produce, the DOE's regulations require that refiners such as Devon and Eason comply with the provisions of Subpart E.¹⁵ The equal application rule of the refiner price formula, which is contained in Subpart E, requires that the firms' increased shrinkage costs be passed through on a firm-wide basis rather than on a stream-by-stream or plant-by-plant basis unless the firms are granted exception relief.

Devon's claim, that compliance with the equal application rule would be impractical in view of its very small ownership interests in other gas plants and the lack of cooperation on the part of the operators of those plants in providing Devon with the information it needs to comply with the equal application rule, would more appropriately be raised in a request for exception relief.

For the reasons set forth above, we have determined that the proper application of the DOE's Mandatory Petroleum Price Regulations to the factual situation presented by Devon and Eason is as follows:

(1) Devon and Eason are refiners of crude oil for purposes of 10 CFR Part 212; and

(2) Devon and Eason must determine May 15, 1973 selling prices and increased costs for NGL's and NGLP's attributable to the processing of natural gas pursuant to Subpart K and must determine the maximum lawful selling prices for all the covered products they sell pursuant to Subpart E.

from refinery's operations); and *Texas American Oil Corp.*, 1 DOE ¶ 82,536 (February 6, 1978) (purchaser of refinery may replace seller as refiner for entitlements purposes prior to completion of acquisition as soon as purchaser assumes control of and financial risks from refinery's operations).

¹⁵We disagreed with Devon's argument that § 212.161(b)(2) applies only to crude oil refiners which are also gas plant operators. The plain meaning of the language of that section does not so limit its application and, moreover, the preamble adopting Subpart K does not support Devon's interpretation. 39 FR 44407, § II.

Issued in Washington, D.C., on February 2, 1979.

EVERARD A. MARSEGLIA, Jr.,
Acting Assistant General Counsel
for Interpretations and Rulings.

INTERPRETATION 1979-4

To: Standard Oil Company (Indiana).
Regulations Interpreted: 10 CFR 211.51 and 211.67.

Code: GCW-AI—Part 211, Lease Condensate, definition; Crude oil, definition; and Entitlements Program.

FACTS

The Amoco Oil Company, a wholly owned subsidiary of the Standard Oil Company (Indiana), is a major, integrated petroleum company that refines crude oil. As a result of its business activities, Amoco is a "refiner" as that term is defined in 10 CFR 211.51 and 211.62. Amoco is therefore subject to the provisions of the Mandatory Petroleum Allocation Regulations set forth in 10 CFR Part 211.

Amoco imports liquid hydrocarbons, which include condensate produced in Algeria, as refinery feedstock. Condensate exists in nature as the heavy hydrocarbon portion of natural gas in the underground reservoir. The condensate is mechanically separated from wet natural gas by separators located either at the wellhead, a central facility in the field, or at a gas processing plant before the remainder of the gas stream is processed. Condensate results from the process of retrograde condensation, which is a reduction in the pressure and sometimes also in the temperature of petroleum hydrocarbons existing in a gaseous state in the reservoir. The Algerian condensate is recovered through a multiple step process. In the field it is first separated mechanically and cooled. The condensate obtained at this stage is transported at atmospheric pressure to a storage tank. It is then transported by pipeline to a processing plant on the coast where the final separation occurs, prior to export.

ISSUES

1. Do the liquids recovered by Amoco from the production of natural gas by means of retrograde condensation conducted in the field qualify as "lease condensate," and thus fall within the definition of crude oil defined in 10 CFR 211.51?

2. May Amoco, a refiner, include these liquids, which are imported from Algeria for refinery feedstock, in its volume of crude oil runs to stills for purposes of the domestic crude oil allocation ("entitlements") program under 10 CFR 211.67?

INTERPRETATION

For the purpose of the Mandatory Petroleum Allocation Regulations liquids recovered from gas production ("lease condensate") by mechanical separation in the field fall within the definition of crude oil in Section 211.51. Accordingly, lease condensate that is used for refinery feedstock qualifies as crude oil and may be included in a refiner's volume of crude oil runs to stills for purposes of the entitlements program under 10 CFR 211.67.

The term "crude oil" is defined in 10 CFR 211.51 for the purpose of the Mandatory Petroleum Allocation Regulations as "a mixture of liquid hydrocarbons including lease condensate that exists in natural underground reservoirs and remains liquid at at-

mospheric pressure after passing through surface separating facilities." (Emphasis added.) Condensate separated from natural gas at the wellhead or in a field facility is typically referred to as "field or lease condensate," whereas condensate separated at the inlet side of a gas processing plant is referred to as "plant condensate." 10 CFR 211.62. See *Mobil Oil Corporation*, Interpretation 1977-31, 42 FR 46273 (September 15, 1977). As a general matter, under the Mandatory Petroleum Price Regulations, condensate, wherever recovered, is considered to be crude oil. 40 FR 40818 at 40819, September 4, 1975. See also, *UPG, Inc.*, Interpretation 1978-35M, 43 FR 57589 (November 13, 1978); Ruling 1975-18 §1a, 40 FR 55860 (December 2, 1975). Under the Mandatory Petroleum Allocation Regulations, however, only lease condensate is generally included in the definition of crude oil.¹

In an Interpretation that was issued to the Mobil Oil Corporation, the Department of Energy determined that condensate recovered from gas production in Indonesia through separation by retrograde condensation and imported into the United States for use as feedstock was lease condensate. *Mobil, supra*. Thus, the condensate was within the definition of crude oil in §211.51 and eligible for inclusion in the refiner's volume of crude oil runs to stills for purposes of the entitlements program. 10 CFR 211.67. The condensate in *Mobil* was recovered by a process that differed from the general method of recovery of lease condensate in that the condensate recovery facilities were not located at the wellhead or in a field facility, but were 20 miles away from the wellhead, near the port where the liquids would be loaded for export. The liquids were first separated at the wellhead before being transported by pipeline to the recovery facility. In the final recovery stage the condensate was reheated to stabilize the liquids for safe marine transportation. The DOE concluded that the completion of the condensate recovery at the loading port does not change the basic method of recovery of the liquids. 42 FR 46273. It stated that the condensate should be considered lease condensate because it was recovered initially on the lease property through retrograde condensation.

¹It should be noted that under the Mandatory Canadian Crude Oil Allocation Regulations (10 CFR Part 214), Canadian plant condensate is included in the definitions of crude oil and crude oil runs to stills, as follows:

"Crude oil" means a mixture of liquid hydrocarbons including lease condensate that exists in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and includes plant condensate and synthetic crude oil made from tar sands.

"Crude oil runs to stills" means the sum of the total number of barrels of crude oil input to distillation units processed by a refiner and measured in accordance with Bureau of Mines Form 6-1300-M. The volume of a refiner's crude oil runs to stills also includes inputs to distillation units of plant condensate produced in and imported from Canada and synthetic crude oil made from tar sands and imported from Canada. 10 CFR 214.21. See also 10 CFR 211.67 (d)(3).

The facts presented by Amoco are similar to the facts in *Mobil*. Under the Amoco process, the condensate is first separated mechanically from the natural gas in the field and cooled. This condensate is then transported by pipeline to the processing plant near the port where it undergoes further treatment through temperature and pressure reduction to stabilize it for export. As is the case in *Mobil*, the condensate is lease condensate since it was first recovered on the lease property through retrograde

condensation. Accordingly, the condensate falls within the definition of crude oil in §211.51 and may be included in the volume of crude oil runs to stills for purposes of the entitlements program under 10 CFR 211.67.

Issued in Washington, D.C., on February 21, 1979.

EVERARD A. MARSEGLIA, Jr.,
Acting Assistant General Counsel for
Interpretations and Rulings, Office
of General Counsel

APPENDIX B.—Cases Dismissed

	Requestor	Category	Date
File No.:			
A-369	Powerline Oil Co.	Allocation	Feb. 14.
A-378	E. B. Brooks, Jr.	Price	Feb. 26.

[FR Doc. 79-8319 Filed 3-19-79; 8:45 am]

[6320-01-M]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Reg. PR-198; Amdt. No. 1]

PART 321—UNUSED AUTHORITY PROCEDURES

Notice of Approval by the General Accounting Office

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., March 13, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule gives notice that the General Accounting Office has approved the application and reporting requirements in the rules governing unused authority provisions of the Airline Deregulation Act of 1978. This approval is required under the Federal Reports Act, and was transmitted to the Civil Aeronautics Board by letter dated March 6, 1979.

DATES: Adopted—March 13, 1979. Effective—March 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Clifford M. Rand, Office of Economic Analysis, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-6044.

Accordingly, the Civil Aeronautics Board amends Part 321 of its Procedural Regulations (14 CFR 321) by

adding the following note at the end of Part 321:

NOTE.—The application and reporting requirements contained in §§ 321.4, 321.10, 321.11, 321.12, 321.13, 321.14, 321.15, 321.20, 321.21, 321.22, 321.23, 321.32(b) and 321.33(c) have been approved by the U.S. General Accounting Office under B-180226 (R0584).

This amendment is issued by the undersigned pursuant to the delegation of authority from the Board to the Secretary in 14 CFR § 385.24(b).

(Sec. 204, Federal Aviation Act of 1958, as amended, 72 Stat. 743 (U.S.C. 1324).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-8321 Filed 3-19-79; 8:45 am]

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. C-2955]

PART 13—PROHIBITED TRADE PRACTICES AND AFFIRMATIVE CORRECTION ACTIVE

CPC International, Inc., et al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires an Englewood Cliffs, N.J. food products manufacturer and its wholly-owned Danville, Ill. subsidiary, Peterson/Puritan, Inc., to divest, within 18 months

from the date of the order, the aerosol packaging facility in Atlanta, Ga. acquired from the Capitol Packaging Company. Additionally, the order prohibits the firms from competing with the facility for two years following divestiture, and bars them from acquiring any contract aerosol packaging concern without prior Commission approval for a five-year period.

DATES: Complaint and order issued February 22, 1979.¹

FOR FURTHER INFORMATION CONTACT:

FTC/C, Alfred F. Dougherty, Jr., Washington, D.C. 20580, (202) 523-3601.

SUPPLEMENTARY INFORMATION: On Thursday, December 14, 1978, there was published in the *FEDERAL REGISTER*, 43 FR 58381, a proposed consent agreement with analysis in the Matter of CPC International Inc., a corporation, and Peterson/Puritan, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been filed, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in this disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; 13.5-20 F.T.C. Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended (15 U.S.C. 45, 18))

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-8325 Filed 3-19-79; 8:45 am]

[6750-01-M]

[Docket No. 9119]

PART 13—PROHIBITED TRADE PRACTICES AND AFFIRMATIVE CORRECTIVE ACTIONS

Lancaster Colony Corp., et al.

AGENCY: Federal Trade Commission.

ACTION: Dismissal order.

SUMMARY: This order dismisses the complaint against two manufacturers of machine-made glassware alleging

violations of Section 7 of the Clayton Act, and Section 5 of the Federal Trade Commission Act. The Commission, in dismissing the complaint, held that under the unique circumstances presented in this case, further proceedings in the matter are not in the public interest.

DATES: Complaint issued Oct. 25, 1978. Dismissal order issued March 6, 1979.¹

FOR FURTHER INFORMATION CONTACT:

Ronald B. Rowe, FTC/CS-2, Washington, D.C. 20580, (202) 724-1441.

SUPPLEMENTARY INFORMATION: In the Matter of Lancaster Colony Corporation, a corporation, and Federal Paper Board Company, Inc., a corporation.

The dismissal order is as follows:

ORDER GRANTING COMPLAINT COUNSEL'S MOTION TO WITHDRAW FROM ADJUDICATION AND TO DISMISS THE COMPLAINT

The Administrative Law Judge (ALJ) has certified to the Commission the motion of respondent Federal Paper Board Company, Inc. (Federal) to terminate this proceeding by an order prohibiting the sale of any of the assets of its Federal Glass Division (Division) to respondent Lancaster Colony Corporation (Lancaster). Also certified to the Commission is Complaint Counsel's motion to withdraw the case from adjudication and to dismiss the complaint. The ALJ recommends that the Commission accept Federal's motion and deny that of Complaint Counsel.

The Division has been closed since January 31, 1979, when Federal announced the shutdown of its plant, alleging continuing operating losses. However, Federal has refused to provide Complaint Counsel with financial and other relevant information in support of its "failing company" defense. In their papers, Complaint Counsel note that the withdrawal of the Wheaton Glass Co. and the Eastcliff Corporation from negotiations to purchase the Division have exhausted all feasible alternatives to liquidation of the Division or sale to Lancaster. Complaint Counsel recognize the possibility that some other purchaser might exist but suggest that the slight chance of identifying another party which will expeditiously return the plant to normal operation is not worth the gamble of approximately 1500 jobs at stake. Counsel further point out that liquidation of the Division could result in the loss of its customers to the two largest firms in this industry, Anchor Hocking Corporation and the Libbey Division of Owens-Illinois.

Under these rather unique circumstances, and in the exercise of our discretion, we conclude that further proceedings in this matter are not in the public interest. *Accordingly,*

It is ordered, That the Complaint in this matter is hereby dismissed.

By the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-8326 Filed 3-19-79; 8:45 am]

[6450-01-M]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY

[Docket No. RM79-22; Order No. 23]

FINAL REGULATIONS AMENDING AND CLARIFYING REGULATIONS UNDER THE NATURAL GAS POLICY ACT AND THE NATURAL GAS ACT

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rules.

SUMMARY: The Commission is amending its regulations relating to the effect of the Natural Gas Policy Act of 1978 on price escalator clauses in existing interstate and intrastate contracts for the first sale of natural gas and is also amending its protest procedures for filings under § 154.94 (h) and (i).

EFFECTIVE DATE: March 13, 1979.

FOR FURTHER INFORMATION:

Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426, (202) 275-4166.

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

MARCH 13, 1979.

The Natural Gas Policy Act of 1978¹ mandates a new legislative framework for the regulation of the natural gas industry. Its principal effect is to establish a comprehensive scheme of statutorily prescribed maximum ceiling prices applicable to discrete types of "first sales" of natural gas occurring in both interstate and intrastate commerce. As such, the Natural Gas Policy Act in many respects limits, replaces or supersedes the application of the previously controlling Federal statute, the Natural Gas Act,² and this Commission's authority and responsi-

¹ Copies of the Complaint and Decision and Order filed with the original document.

¹ Copies of the Complaint and Dismissal Order filed with the original document.

¹ Pub. L. 95-621, 92 Stat. 3350.
² 15 U.S.C. § 717 *et seq.* (1938).

bility thereunder, Nevertheless, the Natural Gas Act continues to be of significance with respect to natural gas which was committed or dedicated to interstate commerce prior to enactment of the new legislative scheme.

Both the terms of the new statute and its legislative history demonstrate that the prices prescribed in Title I of the Natural Gas Policy Act are ceiling prices. Contractual provisions governing the purchase and sale of natural gas are superseded or nullified only to the extent that the contractual terms would provide for prices in excess of the statutory ceilings. Contractual terms which provide for prices below the statutory ceilings are unaffected.³ In this regard, the Joint Explanatory Statement of the Committee on Conference (Conference Report) explains:

[a]ll maximum lawful prices are ceiling prices only. In no case may a seller receive more than his contract permits.⁴

Generally speaking, the legislative scheme of the Natural Gas Policy Act presents little difficulty in the case of new sales contracts where the parties are free to agree to any price so long as it does not exceed the applicable statutory ceilings. Also, in the case of existing sales contracts which specify a fixed price or provide for a schedule of specific price increases, the respective rights and obligations of the parties to the contract are readily discernible and the relationship of the Natural Gas Policy Act to that contract are relatively straightforward.

The vast majority of existing sales contracts, however, are not of that character. Most contain escalator clauses of one kind or another which permit upward price adjustments during the term of the contract. These upward price adjustments do not provide for fixed or definite price increments and frequently are not tied to a specific schedule but are "triggered" by other means. The relationship of the Natural Gas Policy Act to these contracts is less straightforward.

Consequently, considerable uncertainty now exists with respect to the rights and obligations of the parties to existing sales contracts which contain escalator clauses. Moreover, a number of questions have arisen concerning the operation of certain escalator clauses within the framework of the Natural Gas Policy Act and, to the

extent it remains applicable, the Natural Gas Act. The questions involve matters of considerable economic significance. Also the issues involved are directly related and are of consequence to the Commission's administrative and enforcement responsibilities under both the Natural Gas Policy Act and the Natural Gas Act. The Commission shall speak to these fundamental issues in this order.

II. PROCEDURAL HISTORY

The Commission's Interim Regulations Implementing the Natural Gas Policy Act at present contain the following admonition with respect to the operation of indefinite price escalator clauses:

§ 270.205 Indefinite price escalator clauses.

(a) The establishment of maximum lawful prices under the NGPA shall not trigger indefinite price escalator clauses in existing intrastate or interstate contracts.

(b) For purposes of this section, the term 'indefinite price escalator clause' shall have the same meaning as provided in section 105(b)(3)(B) of the NGPA.⁵

As noted in the Preamble to the Interim Regulations, § 270.205 was an attempt to incorporate the expression of Congressional intent at page 83 of the Joint Explanatory Statement of the Committee of Conference respecting the effect of the establishment of maximum lawful prices on indefinite price escalator clauses in existing intrastate contracts. The Commission's Interim Regulations applied the same rule to interstate contracts.⁶

Since the adoption of the Interim Regulations, we have received numerous comments and requests for clarification. The Commission first considered this matter at an open meeting on December 21, 1978. Memoranda discussing the issue were inserted into the public record in Docket No. RM79-3 in order to solicit an expression of views and comments and to assist the Commission in resolving the issues presented by the rule. These memoranda also sought to address several questions which had arisen at various NGPA implementation seminars, through the Commission's telephone hot-line program, and at public hearings held before staff panels in Washington, D.C., New Orleans, San Fran-

cisco and New York. In response to these comments, an oral argument was convened on the issues this order addresses before the Commission *en banc* on January 19, 1979. Nineteen parties participated in this argument, and numerous written comments were received.⁷

Following the oral argument, and after consideration of the comments, the Commission reached a tentative decision on the matters at issue in an open meeting on January 24, 1979.

The Commission had intended to issue an immediately effective final rule. The Commission was fully aware that continued uncertainty with respect to the contractual rights of the parties could (and would if allowed to go on much longer) have serious detrimental effects in the marketplace. It was our objective, therefore, to address this matter in a comprehensive way as early as practicable. However, upon concluding the review of the proposed order, the Commission recognized that there were still some lingering questions concerning the foundation and rationale advanced for the tentative conclusions. Also, in light of the complexities and importance of the issues involved, the Commission determined that it would be a more prudent course to test its preliminary conclusions in a further comment period and to seek to measure the consequences of the proposed decision.

For these reasons, on February 13, 1979, the Commission published its tentative conclusions in the form of a proposed rulemaking, vacating its previous determination to issue an immediately effective final rule. In its notice, the Commission not only asked for views on its proposed rule, but also invited comments on three alternative approaches.

On February 27, 1979, a public hearing was convened at which 20 parties appeared. In addition, we received written comments from numerous parties, including Members of Congress, government agencies and officials, producers, pipelines, distribution companies, other purchasers and consumer groups.

The Commission has evaluated each of the oral and written comments presented.⁸ On the basis of that evalua-

⁷See, Notice of Seminars Concerning Implementation of the Natural Gas Policy Act of 1978, November 14, 1978; see also, Order Setting Oral Argument, issued January 12, 1979, in Docket No. RM79-3. FERC News Release FE-474, November 13, 1978. FERC News Release FE-468, November 1, 1978.

⁸As we stated in our notice at page 5, the rule was proposed in a separate docket number. We reiterate that the action we take today, although issued in Docket No. RM79-22, reflects consideration of all relevant comments submitted in Docket Nos. RM79-3 and RM79-4. We further reiterate that we take official notice of and incorporate by reference the relevant portions of those dockets.

³Section 101(b)(9) of the Natural Gas Policy Act provides: [in] the case of any price which is established under any contract for the first sale of natural gas and which does not exceed the applicable maximum lawful price under this title * * *, such maximum lawful price * * * shall not supersede or nullify the effectiveness of the price established under such contract.

⁴H.R. Report No. 95-1752, 95th Cong., 2d Sess., at p. 74. See also, the statement of Congressman John D. Dingell at 95 Cong. Rec. 13117 (daily ed. October 14, 1978).

⁵Section 105(b)(3)(B) defines indefinite price escalator clause as follows:

(B) Definition of Indefinite Price Escalator Clause.—For purpose of this paragraph, the term 'indefinite price escalator clause' includes any provision of any contract—

(i) which provides for the establishment or adjustment of the price for natural gas delivered under such contract by reference to other prices for natural gas, for crude oil, or for refined petroleum products; or

(ii) which allows for the establishment or adjustment of the price of natural gas delivered under such contract by negotiation between the parties.

⁶See discussion at pages 19, *et seq.*, *infra*.

tion the Commission has determined to revise its preliminary views on these matters in a number of important respects. In the following section containing the Commission's Analysis and Decision we have dealt specifically with a number of the comments and have appended to this order a summary of the major arguments presented to us. It is entirely impracticable in the circumstances to discuss each and every argument submitted for our consideration. Accordingly, the Commission advises that, although we have considered the entirety of the comments submitted to us, some raise questions beyond the scope of this order and consequently are not dealt with herein.⁹

⁹Tenneco Oil Company and others (Tenneco) have filed a motion requesting the Commission to waive the requirement that persons apply for rehearing of this order prior to seeking judicial review thereof. The need for rehearing of rules and regulations issued under the Natural Gas Policy Act arises under section 506 of that Act and Commission Order No. 21 (January 3, 1979). Section 506(b) does not expressly require rehearing of rules and regulations promulgated under the Natural Gas Policy Act. The Conference Report, however, "provides [that] judicial review [under the NGPA shall be] based on the Natural Gas Act * * *." H.R. Rep. No. 95-1752 at 122, 95th Cong., 2d Sess. (1978). In issuing Order No. 21, the Commission "determined to give effect to the expressed intention of [Congress] that generally the judicial review procedures under the NGPA should follow those under the Natural Gas Act" (Order No. 21 at 6), and adopted regulations providing for rehearing of rules and regulations issued pursuant to the Natural Gas Policy Act. Petitions for review of Order No. 21 are pending before the Fifth Circuit Court of Appeals in *Eccc, Inc., et al. v. FERC*, No. 79-1171.

Tenneco suggests that the rehearing requirement should be waived in this proceeding because there is no substantial need for further Commission action in this proceeding and because rehearing in this docket will adversely impact arrangements in the *Eccc* case to resolve expeditiously the question of the validity of Order No. 21. Tenneco presents various arguments in support of its position that rehearing should be waived in this proceeding. In essence, Tenneco argues that all interested persons have had several opportunities to present their views and that further delay would not be beneficial. While we sympathize with Tenneco's desire to obtain prompt judicial review of the Commission's order in this proceeding and agree that this proceeding must be brought to a conclusion as expeditiously as is practicable in the circumstances we must deny the request for waiver of the rehearing requirement.

In this proceeding, The Commission is acting pursuant to both the Natural Gas Policy Act and the Natural Gas Act, and is amending regulations adopted pursuant to the Natural Gas Act. Section 19(a) of the Natural Gas Act, 15 U.S.C. 717r(a) provides to all adversely affected persons a right to petition the Commission for rehearing of orders within 30 days after issuance. Thereafter, if rehearing is denied by the Commis-

III. COMMISSION ANALYSIS AND DECISION

Before proceeding with our analysis, we believe it advisable to make a few preliminary points. First, the Commission fully accepts the view that the maximum lawful ceiling prices prescribed under the Natural Gas Policy Act are "just and reasonable" prices for purposes of section 4 and section 5 of the Natural Gas Act. The Congress has clearly said so in section 601 of the Natural Gas Policy Act. Moreover, the Commission does not (nor could it properly) object to such prices on the basis that they are "too high" or that they are not adequately "cost-related or justified". The Congress has struck the balance between consumer and producer interest; reserved to this Commission is only the task of administration and the authority to prescribe higher price ceilings in certain circumstances.¹⁰

Second, our purpose and responsibility here is to give effect to Congressional intent as that may be gleaned from the contemporaneous legislative history which was constructed at the time the Natural Gas Policy Act was enacted.

Third, we cannot responsibly withdraw from the field and refuse to examine contractual arrangements as has been suggested to us. Both the Natural Gas Policy Act and the Natu-

sion, that person may seek judicial review as provided by section 19(b) 15 U.S.C. 717r(b). See, e.g., *Federal Power Commission v. Colorado Interstate Gas Co.*, 348 U.S. 492, 497-499 (1955). The Commission lacks the authority, to waive at the behest of any individual party the statutory right conferred on all interested persons to seek rehearing, just as no person may seek judicial review until he has exhausted that remedy. E.g., *Federal Power Commission v. Colorado Interstate Gas Co. supra*; *Boston Gas Co. v. Federal Energy Regulatory Commission*, 575 F. 2d 975, 977-979 (1st Cir. 1978). We also conclude that the same rule should apply under the Natural Gas Policy Act, both because Congress intended that judicial review under the Natural Gas Policy Act would generally follow the pattern of judicial review under the Natural Gas Act, and because exhaustion of rehearing remedies is a useful and practical administrative prerequisite to development of the Commission's final decisions. Furthermore, even if the Commission had the authority to waive the rehearing requirement under the Natural Gas Policy Act, we find no good cause for doing so in this proceeding. This order constitutes the Commission's initial promulgation of final regulations specifically addressing the operation of various indefinite pricing clauses. Rehearing will afford the Commission the opportunity to correct any errors prior to judicial review and to narrow and refine any issues which might be presented to the courts. Finally, rehearing will not unduly delay final resolution of the issues herein. For these reasons, Tenneco's motion is denied.

¹⁰See, sections 104(b)(2), 106(c), 107(b) and 109(b)(2).

ral Gas Act relate the terms of contractual arrangements between buyers and sellers to the controlling statutory requirement. On this last point, some further amplification may be helpful.

The Congress has resided in this Commission both the authority and responsibility to administer the Natural Gas Policy Act and, in particular, to insure the integrity of the ceiling prices established in Title I. In several instances statutory requirements are based on contractual relationships. In particular, with respect to natural gas not previously committed or dedicated to interstate commerce which is being sold under an existing contract, the statutory ceiling price is the price under the terms of the contract as it existed on November 9, 1978 (section 105(b)(1)). Also, the maximum lawful price which governs any rollover contract of natural gas which was not previously committed or dedicated to interstate commerce is governed by reference to the terms of the expired contract. Accordingly, under the legislative scheme, this Commission must necessarily become involved in reviewing the contractual arrangements between parties to existing contracts as they relate to natural gas not previously committed or dedicated to interstate commerce.

In the case of gas previously committed or dedicated to interstate commerce which is being sold under existing contracts, the Commission's responsibility is even more direct and substantial.¹¹ As previously noted in the introduction, the Natural Gas Act and the Commission's regulations continue to apply in many important respects to natural gas which was previously committed or dedicated to interstate commerce. It is true that the system of legislatively prescribed maximum ceiling prices replaces in large measure both the Commission's authority and its responsibility to establish just and reasonable rates applicable to producer sales in interstate commerce. And it is equally true that

¹¹The "more direct and substantial responsibility" to which the above paragraph refers attaches only to natural gas which was previously committed or dedicated to interstate commerce and which is being sold under an existing contract. The Commission takes this opportunity to emphasize the importance of the distinction between natural gas which was not committed or dedicated to interstate commerce on the day before date of enactment, and that which was. It is not a question of interstate or intrastate commerce, as such. In other words, natural gas which was not previously committed or dedicated to interstate commerce would not be subject to additional restrictions merely because the rollover contract was executed with an interstate pipeline or an interstate pipeline succeeded to the purchaser's interest in an existing contract. In either instance, sections 105 and 106(b) of the Natural Gas Policy Act would govern.

the Congress has deemed the statutory ceiling prices to be just and reasonable for purposes of sections 4 and 5 of the Natural Gas Act. But the question still remains whether there exists the requisite contractual authority to charge and collect such prices. The principal established in section 101(b)(9) of the Natural Gas Policy Act is that the legislation prescribes ceiling prices. The Congress specifically recognized that contract prices may be lower than the Federal maximum lawful price and that, in such circumstances, the contractual arrangement between the parties would continue to govern their relationship, and not be superseded by the Federal ceiling price.¹² Thus, where the Natural Gas Act continues to govern, the Congress seems to have intentionally preserved the *Mobile-Sierra* line of cases¹³ which require this Commission to determine not only whether the rate is just and reasonable but also whether the sales contracts between the parties authorize those rates.

In the *Mobile-Sierra* cases, the Supreme Court held that a utility may not unilaterally file for increased rates when the company's contracts with its wholesale customers fix the rates for the contract term. This simply means that the contract between the parties governs the legality of the filing. Rate filings consistent with contractual agreements are valid; rate filings inconsistent with contractual obligations are invalid.¹⁴ This rule of law parallels the preservation of a buyer's contractual right to purchase natural gas at prices below the Natural Gas Policy ceiling prices as contained in section 101(b)(9). Accordingly, the *Mobile-Sierra* doctrine requires the Commission to determine whether contractual authorization exists for the collection of the maximum lawful prices established by the Natural Gas Policy Act.

Because the statutory requirement and this Commission's responsibilities differ with respect to gas sold under existing contracts depending on whether the gas was previously committed or dedicated to interstate commerce, we will address these matters separately. For convenience, we will refer to "existing intrastate contracts" and "existing interstate contracts".

Readers of the Commission's order should keep in mind that these terms do not accurately track the distinction which the Congress has drawn in the Natural Gas Policy Act.¹⁵

A. BACKGROUND

Existing intrastate contracts contain a variety of indefinite escalator and price redetermination provisions. One common form is a favored nations clause, requiring the price paid to increase to keep pace with other prices paid or natural gas in some defined area. Another is a price-reference clause which provides for an increase in price tied to any increase in the delivered price of some other fuel. Redetermination provisions generally provide that as a particular time during the contract term or upon the happening of a stated event, the parties will negotiate a new price. Still another common type of clause is the use in an intrastate contract of an "FPC clause", which would operate to increase the contract price whenever the FPC or FERC set a new just and reasonable rate.

Each of the aforementioned escalator and price redetermination provisions would appear to be "indefinite price escalator clauses" falling within the definition contained in section 105(b)(3)(B) of the Natural Gas Policy Act. Section 105(b)(3) applies to the post-1984 period and it may be suggested that the definition contained in clause (B) has no current applicability. However, the Conference Report discussion, appearing at page 83, indicates that the Conferees specifically considered the question of the pre-1985 applicability of indefinite price escalator clauses and had some specific views and instructions to offer with respect to their effect and applicability. It may be safely presumed, we think, that the Conferees intended to attach the same meaning to the term "indefinite price escalator clause" in its discussion as it attaches to the use of that term in the section of the Act to which that discussion, in large measure, pertains. On pages 82-83 of the Conference Report we are told several important things in this regard.

First, in the case of sales of natural gas under an existing intrastate contract, the statutory ceiling price depends upon the contract price in effect on the date of enactment of this Act (November 9, 1978). If the contract price in effect on November 9, 1978, is less than the new gas ceiling price (i.e., the section 102 price applicable to "new gas"), the maximum lawful

price, beginning in December 1978 and any subsequent month, is the lower of (1) the price under the terms of the existing contract in effect on November 9, 1978, or (2) the new gas price. This is the formula provided in section 105(b)(1). Thus, we are told, "the price under the contract may escalate through the operation of both fixed price escalator clauses and indefinite price escalator clauses in existence as of the date of enactment, but the price may not exceed the new gas price."¹⁶

On the other hand, if the contract price in effect on November 9, 1978, is greater than the new gas price, the maximum lawful price formula under section 105(b)(2) would allow further increases in the contract price only to allow for adjustments for inflation, unless or until the new gas price catches up to the adjusted contract price. Thereafter the price may increase to track the increase in the new natural gas price. Accordingly, the operation of both fixed price escalator clauses and indefinite price escalator clauses is limited to the rate of the inflation adjustment unless and until the new gas price catches up and thereafter exceeds the inflation adjusted contract price.

Having thus set out the basic method for determining the maximum lawful price applicable to existing intrastate contracts, the conferees then turn to a discussion of the operation of indefinite price escalator clauses. This discussion notes that the provisions of section 313 of the Natural Gas Policy Act specifically prohibit prices paid in any sale of high-cost natural gas, from triggering the operation of any indefinite price escalator clauses. The conferees also observe that the Federal government has ceded to states under section 602 the authority to further limit the operation of price escalator clauses as an adjunct to their authority to prescribe lower maximum lawful prices for the first sale of natural gas produced within the state.

Then the following paragraph appears:

Some intrastate contracts currently in existence contain indefinite price escalator clauses which can be triggered by a number of factors, including adjustments by the Commission of "just and reasonable" rates established under the Natural Gas Act. The conferees do not intend that the mere establishment of the ceiling prices under this Act shall trigger indefinite price escalator clauses in existing intrastate contracts. Once natural gas is sold pursuant to the ceiling prices under this Act, such clauses would be activated as limited by this Section.

In the immediately preceding paragraph of the Conference Report, we

¹²Remarks of Congressman John D. Dingell, 95 Cong. Rec. 13117 (daily ed October 14, 1978).

¹³*United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *United Gas Pipe Line Co. v. Memphis Light, Gas and Water Division, et al.*, 358 U.S. 103 (1958).

¹⁴*Richmond Power & Light v. FPC*, 481 F.2d 490 (1973). See *Otter Tail Power v. FPC*, 536 F.2d 240 (1976); *Appalachian Power Co. v. FPC*, 529 F.2d 342 (1976).

¹⁵As noted previously in footnote 12, the distinction turns on whether the gas under the existing contract was previously committed or dedicated to interstate commerce on November 8, 1978.

¹⁶H.R. Report No. 95-1752, 95th Cong., 2d sess., at p. 82.

are told that "[t]his section of the Conference Agreement is not intended to apply to interstate contracts in existence as of the date of enactment" ¹⁷, and that the Conferees were aware that "[s]uch contracts are currently subject to regulation by the Commission pursuant to the Natural Gas Act." The Conferees then go on to assert that "[C]ommission regulations bar the use of indefinite price escalator clauses in interstate sales."

These two paragraphs which appear at page 83 of the Conference Report, lie at the root of the debate and confusion which attends the question of the operation of indefinite price escalator clauses under the Natural Gas Policy Act. And it is this Commission's attempt to give expression to the Congressional intent embodied in these paragraphs that has focused comment on the important questions which relate to the operation of price escalator clauses under the Act.

In drafting its Interim Regulations implementing the Natural Gas Policy Act, the Commission merely attempted to incorporate in its Regulations an approximation of the legislative expression contained on page 83 of the Conference Report. Inasmuch as the Regulations were required to be effective on December 1, 1978, only three weeks from date of enactment, time did not permit a considered exposition of the effect of indefinite price escalator clauses under the Act. Thus, the Commission provided in § 270.205 (18 CFR 270.205) that:

(a) The establishment of maximum lawful prices under the NGPA shall not trigger indefinite price escalator clauses in existing intrastate or interstate contracts.

(b) For purposes of this section, the term "indefinite price escalator clause" shall have the same meaning as provided in section 105(b)(3)(B) of the NGPA.

With respect to existing intrastate contracts, § 270.205 approximates the language contained in the second sentence of the last paragraph on page 83 of the Conference Report. The section was made equally applicable to interstate contracts in order to make clear that the current bar to certain indefinite price escalator clauses under existing Commission Regulations would continue in effect. In so doing, we were attempting to give expression to the intent and requirement of the penultimate paragraph contained on page 83 of the Conference Report.¹⁸

¹⁷ Presumably the reference to "this section" is a reference to section 105 of the Natural Gas Policy Act.

¹⁸ In this regard Senator Henry M. Jackson, Senate Floor manager for consideration of the Natural Gas Policy Act, stated, in referring to indefinite pricing provisions, "However, operation of those clauses is prohibited by current Commission Regulations. There is no intent to change or otherwise modify that prohibition." 95 Cong. Rec. S. 15021 (daily ed. Sept. 13, 1978).

Existing interstate contracts, like their counterparts in the intrastate market, contain a variety of price escalator clauses. But unlike the situation that obtains with respect to intrastate contracts, certain price escalator clauses contained in interstate contracts have been prohibited or made inoperative under Commission Regulations promulgated pursuant to the authorities contained in the Natural Gas Act.

The Current prohibitions are contained in § 154.93 of the Commission's regulations under the Natural Gas Act. Generally speaking, this Regulation makes inoperative any provision in an interstate contract which provides for a change in price which is not in the form specifically permitted by the regulations. Specifically, § 154.93 provides in pertinent part:

Provided, That in contracts executed on or after April 3, 1961, for the sale or transportation of natural gas subject to the jurisdiction of the Commission, any provision for a change of price other than the following provisions shall be inoperative and of no effect at law; the permissible provisions for a change in price are:

(a) Provisions that change a price in order to reimburse the seller for all or any part of the changes in production, severance, or gathering taxes levied upon the seller;

(b) Provisions that change a price to a specific amount at a definite date;

(b-1) Provisions that permit a change in price to the applicable just and reasonable area ceiling rate which has been, or which may be, prescribed by the Commission for the quality of the gas involved; and

(c) Provisions that, once in five-year contract periods during which there is no provision for a change in price to a specific amount (paragraph (b) of this section), change a price at a definite date by a price-redetermination based upon and not higher than a producer rate or producer rates which are subject to the jurisdiction of the Commission, are not in issue in suspension or certificate proceedings, and, are in the area of the price in question: *Provided further*, That any contract executed on or after April 2, 1962, containing price-changing provisions other than the permissible provisions set forth in the proviso next above shall be rejected. [Order 242, 27 FR 1357, Feb. 14, 1962, as amended by Order 329, 31 FR 15486, Dec. 8, 1966.]

Thus, current Regulations of the Commission declare "inoperative and of no effect at law" most indefinite price escalator clauses. And it was of this prohibition that Senator Jackson spoke when he stated that there was no "intent to change or otherwise modify that prohibition."¹⁹ The problem occurs with respect to paragraph (b-1) of the above quoted proviso. There the Regulation specifically allows to operate a provision which would "permit a change in price to the applicable just and reasonable area ceiling rate which has been, or which

¹⁹ 95 Cong. Rec. S. 15021 (daily ed. Sep. 13, 1978).

may be, prescribed by the Commission for the quality of the gas involved". Contractual clauses of the character permitted under paragraph (b-1) of § 154.93 have come to be known as "area rate clauses" or "FPC clauses".

First, it should be noted that an "area rate clause" would fall within the technical definition of indefinite price escalator clauses contained in section 105(b)(3)(B) of the Natural Gas Policy Act. Further evidence that the Congress regarded area rate clauses as indefinite price escalator clauses can be gleaned from the first sentence in the last paragraph appearing on page 83 of the Conference Report which states, "[s]ome intrastate contracts currently in existence contain indefinite price escalator clauses which can be triggered by a number of factors, including adjustments by the Commission of just and reasonable rates established under the Natural Gas Act". It is possible to structure an argument that the Congress misperceived the effect of the Commission's Regulations believing that those Regulations constrained the operation of area rate clauses in interstate contracts, thus making it unnecessary for the Congress to address the question in specific terms. We do not think, however, there is much substance to such an argument. The more likely construction of legislative intent is that the Congress intended that the Commission continue to prohibit that which was prohibited, but allow to operate that which has been permitted under the terms of the Commission's Regulations.

It is from this perspective, that the Commission examined in its proposed rulemaking the provisions of § 154.93 of its regulations under the Natural Gas Act. After reviewing the historical development of the prohibitions contained in § 154.93 and the development of area rate clauses, the Commission reached the tentative conclusion that any contractual clause which tracked the literal text of paragraph (b-1) of § 154.93 would not be triggered by the Natural Gas Policy Act. And, any price escalator clause which did not follow the literal text of paragraph (b-1) of § 154.93, was by the specific terms of that Regulation made "inoperative and of no effect at law". Accordingly, the Commission reasoned that any such clause would be given no greater effect than a clause specifically permitted under paragraph (b-1). With respect to whether a conforming area rate clause was triggered, the Commission noted that the Regulation permitted price increases only to the "applicable just and reasonable area rate . . . prescribed by the Commission." The Natural Gas Policy Act ceiling prices are not prescribed by the Commission; they are prescribed by

Congress. Accordingly, adopting what it characterized as a "plain meaning" construction, the Commission stated that area rate clauses conforming to the literal text of the Commission's regulations would not trigger to the Natural Gas Policy Act rates and those which did not conform to the literal text were rendered inoperative under the regulation.

Similarly, it was the Commission's preliminary view that intrastate contracts which contained an "FPC-type clause" conforming to the literal text of the Commission's Regulations would also not trigger the Natural Gas Policy Act rates. Moreover, the Commission expressed the opinion that area rate clauses, whether in interstate or intrastate contracts, which permitted escalation in the event of action to be taken by a "successor governmental authority" should not be read as triggered by the Natural Gas Policy Act rates. Here the Commission reasoned that Congress was not a "successor" to the Commission but rather is the Commission's predecessor and progenitor from which its authority derives.²⁰

The Commission is now convinced that the initial view taken in the proposed rulemaking was incorrect in a number of respects and must be revised.

The principal flaw in the Commission's reasoning lies in the too narrow focus of the proposed rule on the provisions of § 154.93 (b-1) and the weight given to the literal text of that provision. Several persons commenting in this proceeding pointed out the weakness in this approach with convincing argument.²¹

As the Commission noted in its proposed rulemaking, the current prohibitions embodied in § 154.93 find their antecedents in Federal Power Commission Order No. 232 which was issued in 1961. That order prospectively banned the effectiveness of certain types of indefinite pricing clauses in interstate contracts. The FPC was primarily concerned with favored-nation, redetermination, or spiral escalation clauses which it characterized as "undesirable, unnecessary and incompatible with the public interest." In essence the Commission determined that such indefinite escalator provisions were "contrary to the public interest" and must be prohibited.²² It is also worth

noting that the FPC had initially proposed an outright bar on all indefinite pricing provisions, only permitting producers and pipelines to include definite pricing provisions in contracts.

On rehearing, the FPC amended its proposed ban to allow certain:

"Limited price-redetermination provisions, invokable not more than once in every five-year contract period and based upon rates subject to this Commission's jurisdiction (and, therefore, controlled)." ²³ These limited price-redetermination provisions were allowed in order to permit pricing flexibility and to provide an incentive for long-term contracts. Several conclusions of importance to the instant proceeding can be drawn from this brief recounting of the development of § 154.93 of the Commission's Regulations. First, the rule firmly stands on a determination that prohibited indefinite escalation provisions are "contrary to the public interest". The continued viability and application of this rule, therefore, would seem to turn on whether the Commission could successfully establish that it had a reasonable basis for concluding that a particular prohibited clause was contrary to the public interest.

It is now the Commission's view that we would lack authority to apply § 154.93 to make inoperative and of no effect at law a price escalation provision as would have specifically bound the parties to the outcome of legislative or specific Congressional action. Thus, if a contract provided for escalation to rates established by the Congress, or by legislative action, or specifically referenced the Natural Gas Policy Act prices, this Commission would be without authority to apply § 154.93 to preclude the operation of such clauses on a "contrary to the public interest" standard. We would agree that if the Commission found it appropriate to allow parties to bind themselves to the outcome of Commission proceedings in the exercise of Congressionally derived authority, we could not rationally maintain that it was contrary to the public interest for the parties to contractually bind themselves to actions taken by the Congress directly.

Moreover, we do not believe that we could apply § 154.93 on a "contrary to the public interest" standard so as to preclude an interpretation of the contractual arrangement between the parties or an amendment to such contract which would bind the parties to the Natural Gas Policy Act maximum lawful ceiling prices. Thus, we have concluded that the Commission's original focus on the provisions of § 154.93 was misplaced. And, to the extent that section of the Commission's regula-

tions under the Natural Gas Act remains applicable, it is our view that it neither bars nor makes ineffective specific contractual provisions which incorporate the Natural Gas Policy Act prices or provisions which provide for price escalation tied to the outcome of Congressional or legislative action.

Those indefinite price escalation clauses which § 154.93 specifically intended to prohibit, such as favored nation, redetermination, or spiral escalation clauses, would continue to be rendered inoperative under the regulation. This result was clearly the intent of the Congress at the time the Natural Gas Policy Act was enacted.

The question still remains, however, whether "typical area rate clauses" operate to permit escalation of contract prices to the maximum ceiling prices provided in the Natural Gas Policy Act. The answer to this question, the Commission believes, is necessarily linked to questions of contractual interpretation and the intent of the parties to that contract. Before turning to that subject, it may be useful to first return to the legislative history of the Natural Gas Policy Act to search for Congressional guidance and instruction on this subject.

B. CONGRESSIONAL INTENT RESPECTING THE OPERATION OF AREA RATE CLAUSES

The question of Congressional intent as it relates to the operation of area rate clauses was extensively discussed in the written comments and in oral argument before the Commission. A perusal of the contemporaneous legislative history constructed at the time the Natural Gas Policy Act was considered, however, reveals little in the way of direct and specific guidance on this matter. As previously discussed, there appears only the discussion on pages 82 and 83 of the Conference Report and the statement by Senator Jackson during the time of Senate floor consideration. In large measure, therefore, the Commission is left to deduce the intent of Congress with regard to this matter.

Several members of the House and the Senate together with Secretary Schlesinger have filed comments with the Commission. Senator Domenici of New Mexico and Congressman Treen of Louisiana also appeared and offered their views in oral argument before the Commission.²⁴ It is true, as the New York Public Service Commission²⁵ points out, that the Commission

²⁰The Commission also reached the tentative conclusion that parties to interstate contracts were generally free to amend their contracts to allow for the payment of the statutory ceiling. The proposed order also addressed the question of amendment authority with respect to interstate contracts.

²¹See, comments of the Public Service Commission of the State of New York filed February 26, 1979, in Docket No. RM79-22 and comments of Indicated Producers filed February 26, 1979, in Docket No. RM79-22.

²²Order No. 232-A, 25 FPC 609 (1961).

²³FPC Order No. 232-A, (Emphasis supplied).

²⁴See, Comments of Senator Pete Domenici filed January 18, 1979 in Docket No. RM79-3; see also, Statement of Senator Pete Domenici filed February 27, 1979 in Docket No. RM79-22, and oral argument February 27, 1979, Tr. 3-10; and Statement of Congressman David Treen at oral argument February 27, 1979, Tr. 21-24.

²⁵Comments of the Public Service Commission of the State of New York, *supra*, at 3, 4.

must look to the *contemporaneous* legislative history. In other words, we must look to see what Congress said at the time the Act was considered. On the other hand, while we cannot regard the views stated by the members of the Congress and Secretary Schlesinger as constituting official legislative history, it is entirely appropriate to evaluate those views as they may provide guidance to the Commission in its effort to deduce legislative intent. Similarly, the Commission has evaluated the views of the other parties in construing Congressional intent.

The arguments concerning legislative intent proceed on two basic lines. First are those which emphasize the basic objectives of the Natural Gas Policy Act as being grounded in the need to (1) remove distinctions between inter- and intrastate markets, (2) provide price predictability, and (3) establish incentives for increased production. This line of argument places heavy emphasis on Congressional recognition that the real dollar value for flowing gas should be preserved through the mechanism of statutory automatic inflation adjustments to the maximum ceiling prices. Considerable weight is also given to the Congress having deemed the maximum lawful ceiling prices to be "just and reasonable" for purposes of section 4 and 5 of the Natural Gas Act. Several commenters have also called the Commission's attention to the fact that the section 103 price ceiling (relating to new, onshore production wells) and the section 102 price (relating to new gas production) as well as the section 107(a)(1) price (relating to deep wells) all employ concepts which measure eligibility on the basis of drilling activity which occurred on or after February 19, 1977—activity which in the extreme would have occurred almost 19 months prior to date of enactment. It is argued that the use of the February 19, 1977 date evidences a specific Congressional intent to provide a statutory substitute for the so-called "missing biennium rate".²⁶ Lastly, this line of argument calls attention to the various economic analyses which were prepared and are a part of the contemporaneous legislative history of the Natural Gas Policy Act. Each of these

analyses makes assumptions with respect to producer revenues, and consumer impacts and supply response which are generally consistent with an expectation that the area rate clauses in existing contracts would trigger to the statutory ceiling prices.²⁷

The second line of argument emphasizes that the Natural Gas Policy Act establishes a series of ceiling prices. And that contracts which provide for lower prices are intended to be given contract sanctity and left undisturbed by the passage of the Natural Gas Policy Act. This line of argument places heavy weight on the Congressional intent to provide a transition to deregulation by 1985. Thus, Congress provided for scheduled increases in the maximum lawful ceiling prices with the full expectation that market forces would develop as supply and demand are gradually brought into balance—thus justifying the removal of price controls at the end of the six-year period. Accordingly, this line of argument would suggest that it is basically inconsistent with the transitional mechanisms for deregulation to conclude that the vast majority of existing contracts which contain area rate clauses all trigger to the maximum ceiling prices provided in the Natural Gas Policy Act, thereby locking the purchaser into the obligation to pay the maximum ceiling prices to the preclusion of his ability to bargain for a lesser price.

Also, although no party to this proceeding appears to have raised the point, it may be contended that the blanket triggering of area rate clauses to the Natural Gas Policy Act ceiling prices would seem to run counter to the Congressional objectives in Title II of the Natural Gas Policy Act concern-

ing incremental pricing. At least one of those objectives is to pass a portion of the incremental cost of purchased natural gas directly on to price sensitive industrial boiler fuel users to bring their cost in line with alternative fuel cost so as to hasten the time at which supply and demand comes into balance, and to create incentives for pipelines to negotiate prices to guard against loss of their industrial load. It would seem basically inconsistent to maintain that interstate pipelines are both forced to pass these incremental costs on to their most price sensitive marginal customers and at the same time, bound under their previously existing contractual arrangements to pay the maximum ceiling prices to the preclusion of their ability to negotiate lesser prices.

The Commission does not believe in the instant case that an entirely satisfactory resolution of the multiple objectives of the Natural Gas Policy Act can be found. As these objectives relate to the matter at hand they appear to be in basic conflict. If area rate clauses are triggered to the Natural Gas Policy Act ceiling prices, some Congressional objectives will be furthered while others would appear to be frustrated. On the other hand, if area rate clauses are not triggered, some Congressional objectives will be met while others would be frustrated. Also, our search for a middle ground has not borne much fruit. We are able, however, to draw some conclusions with respect to the intended operation of the Commission's current prohibitions on indefinite price escalator clauses contained in § 154.93 of its regulations under the Natural Gas Act.

After evaluating the comments and views expressed, it would appear that, while the Congress cannot be said to have conclusively intended to have area rate clauses trigger to the Natural Gas Policy Act ceiling prices to the preclusion of the parties ability to negotiate lesser prices, the Commission cannot find a convincing basis upon which to conclude that the Congress did not intend to allow area rate clauses to trigger to the statutory ceiling prices.

In short, we find that the prohibitory language in § 154.93 of the Commission's regulations to be too slender a reed upon which to place the weight of a Commission decision that area rate clauses were intended not to be triggered by the statutory ceiling prices. The Congressional direction contained on page 83 of the Conference Report is simply too ambiguous to rely on to reach a conclusion of this consequence.

It does appear that under paragraph (b-1) of § 154.93, the Federal Power Commission permitted, as consistent with the public interest, price escala-

²⁶In Opinion 770-A the Federal Power Commission had committed to a biennium rate process which would adjust the national rate every two years. The Commission had initiated a proceeding to establish a biennium rate for 1977 and 1978 gas vintages, but suspended that proceeding after both Houses of Congress passed legislation which would discard the Natural Gas Act cost-based pricing methodology. See, Comments of the State of Texas, filed February 27, 1979 and Statement of the Texas Independent Producers and Royalty Owners Association, filed February 27, 1979.

²⁷The studies were prepared by the Department of Energy/Energy Information Administration, the staff of the House Subcommittee on Energy and Power and the Congressional Budget Office. The Commission believes it appropriate to comment very briefly on this point. Several factors reduce the persuasiveness of the argument. First, not one of the studies makes a specific assumption concerning the applicability of area rate clauses. It could equally well have been assumed that the relative supply/demand imbalance in the marketplace was sufficient to drive the current prices to the maximum statutory ceilings. Second, the studies do not appear to take into account that a considerable amount of gas continues to be sold at fixed price contracts. Third, as Secretary Schlesinger pointed out in his statement, the DOE/EIA study assumes that existing stripper well prices would not rise to the stripper ceiling "until current contracts expired". While no explanation of this assumption is given, it would seem inconsistent with the theory that all area rate clauses are triggered to the Natural Gas Policy Act ceilings and at the same time assume that in the case of existing stripper wells the price ceilings would not be obtained until current contracts expire.

tor clauses to operate to bind the parties to the outcome of Commission proceedings which prescribed just and reasonable rates of general applicability. The FPC appeared to require as a matter of public policy only that the rates be controlled,²⁸ that they be just and reasonable, that they be generally applicable to an area, and that they apply to the quality of the gas involved (i.e., vintage). The Natural Gas Policy Act maximum ceiling prices fit each of these criteria.

It is true that the rates are not prescribed by the Commission but by the Congress. While that distinction may have some importance to the parties to a contract and parties in interest to interstate sales contracts,²⁹ it cannot serve as a proper basis for the Commission concluding that its regulations under § 154.93 preclude the parties from relying on area rate clauses as a basis for charging and collecting the Natural Gas Policy Act statutory prices. To our earlier discussion concerning the applicability of § 154.93 of our current regulations, we would add only the question: Does it seem reasonable that the Congressional reliance on the prohibitions contained in existing Commission regulations—which permitted and did not prohibit area rate clauses—could be construed as an intention to disallow the operation of area rate clauses? We think not.

Accordingly, the Commission has concluded that § 154.93 of its current regulations does not bar or proscribe reliance on an appropriate area rate clause as authority for charging and collecting applicable Natural Gas Policy Act prices. It could be expected that Congress would have little patience with the assertion by this Commission, on a public interest standard, that § 154.93 bars the operation of area rate clauses to preclude the incorporation of rates which the Congress has determined are "just and reasonable" simply on the basis that such rates were prescribed by the Congress and not by this Commission. It is even harder to conclude that Congress intended that reading of § 154.93.

The Commission's inquiry does not end with the above conclusion, however; nor does its responsibility. Although we have concluded that our existing regulations do not preclude reliance on area rate clauses, the question still remains whether such clauses, in fact, operate to trigger to the Natural Gas Policy Act ceiling prices. As previously noted, the answer to this question turns on matters of contract construction and the intent of the parties.

²⁸ See page 26, *supra*.

²⁹ See following discussion on pages 39-41, *infra*.

C. OPERATION OF AREA RATE CLAUSES— CONTRACTUAL CONSTRUCTION AND INTERPRETATION

A great number of the comments filed directed their attention to the intent of parties who entered into area rate clauses. Of particular relevance was the substantial level of agreement between most sellers and buyers as to what was generally intended when the area rate clause was executed. Equally important, however, was the representation that area rate clauses vary considerably in their wording, and that no definitive statement could therefore be made by the Commission that would resolve all concerns.

Most sellers of natural gas in the interstate market have taken the view that the intent of parties in agreeing to an area rate clause was to permit escalation to the highest ceiling price permitted by law.³⁰ Most interstate pipeline purchasers have endorsed this position. At oral argument on February 27, 1979, the Interstate Natural Gas Association of America (INGAA), a trade association of interstate pipelines, stated that it was the intent of purchasers in agreeing to area rate clauses to permit escalation to "the level of the generally applicable ceiling rate which has been established by Federal authorities," (emphasis added) rather than by the Commission.³¹ Individual pipelines have expressed the same view.³²

Other pipelines have commented that it was their intent in acceding to the inclusion of an area rate clause in their own purchase contracts to permit escalation to the highest ceiling price of general applicability, whether set by the FPC or any other authority,³³ or to the highest ceiling permitted by law.³⁴

A contrary interpretation was suggested by another pipeline company, however. Consolidated Gas Supply Corporation would interpret a clause which calls for escalation to a price prescribed by the Commission "or successor governmental authority" as not permitting escalation to NGPA prices. Its rationale is that by using such a

clause the parties "clearly contemplated the fixing of rates through agency-type hearings".³⁵ Consolidated would, however, permit the operation of clauses worded to permit escalation to rates set by other governmental authority rather than the Commission or "successor governmental authority". The representative for Panhandle Eastern Pipeline Company went a step further, suggesting in oral argument on January 19, 1979, that interpretation of the area rate clause isn't just a question of what the language says. It is also a question of what was in the minds of the parties when they entered into it.³⁶

The State of Michigan and the Michigan Public Utilities Commission stated yet another position on the intent of contracting parties:

Michigan wishes to stress that the interpretation of natural gas contracts must rest strictly on the language chosen by the parties for these agreements are not merely private bilateral contracts but are tariffs as well.

Michigan then goes on to say that the intent of parties, obvious under the plain meaning of the clause, is not to permit escalation to the NGPA rates.³⁷

It is apparent from the comments received in this proceeding, that the wording of area rate and similar clauses varies widely, and interpretations may differ. The wording of a particular clause and the affect ascribed to that clause by the contracting parties will generally be determinative of whether a particular area rate clause authorizes the collection of the Natural Gas Policy Act prices.

Nevertheless, in light of our administrative responsibilities under the Natural Gas Policy Act and the Natural Gas Act with respect to contractual matters, we believe it both necessary and appropriate to state some general views. At the outset, however, we wish to make it perfectly clear that we do not intend to establish a *dispositive* view of this matter. Several parties have cautioned us against that approach.³⁸ It is asserted that the record in this proceeding will simply not support a conclusive ruling on the operation of area rate clauses. We would

³⁰ See, e.g., Statement of Mobil Oil Corporation, filed February 27, 1979, at 1, 2. Comments of Indicated Producers, filed February 27, 1979; Comments of Shell Oil Company filed February 22, 1979; and Statement of Independent Petroleum Association of America filed February 27, 1979.

³¹ Oral argument, January 19, 1979, in Docket No. RM79-23, Tr. 16. See also, Tr. 29; and INGAA's Comments filed February 27, 1979, at 2.

³² See, e.g., Comments of Michigan-Wisconsin Pipe Line Company filed January 18, 1979, in Docket No. RM79-3 at 1.

³³ See, e.g., Comments of Natural Gas Pipeline Company of America, filed January 18, 1979, in Docket No. RM79-3, at 3.

³⁴ Comments of Texas Gas Transmission Company, filed February 27, 1979, at 3.

³⁵ Supplemental Comments of Consolidated Gas Supply Corporation filed January 31, 1979, in Docket No. RM79-3, at 1; see also, oral argument January 19, 1979, Tr. 132.

³⁶ Oral argument, January 19, 1979, in Docket No. RM79-3, Tr. 100.

³⁷ Oral argument, February 27, 1979, in Docket No. RM79-22, Tr. 226.

³⁸ See in particular, Comments of "Eight Independent Producers", filed February 27, 1979; Chevron U.S.A., filed February 26, 1979; and, Statement of Jack D. Head on Behalf of Texas Eastern Transmission Corporation and Transwestern Pipeline Company, filed February 27, 1979.

agree. Accordingly, our views on this matter should be taken in the nature of "guidance".

The Commission recognizes that the parties to existing interstate sales contracts are not the only parties in interest. As has been forcefully and correctly pointed out in these proceedings,³⁹ the gas consumer and the local distribution companies served by those pipelines have very direct and substantial interest in these matters. Nevertheless, as the courts have recognized in questions of contract interpretation, great weight must be given to the intent of the parties to the contract.⁴⁰

After the fullest consideration of the comments received in this proceeding, it is clear that many parties to interstate sales contracts which contain area rate clauses were of the view that, by agreeing to an area rate clause, the parties intended to permit prices to escalate to the highest generally applicable ceiling rate allowed by governmental authority provided the rate was "just and reasonable" and the gas under the contract qualified for that rate. As stated by Michigan Wisconsin Pipe Line Company in its written comments:

*** [Parties to interstate contracts generally believed that some form of governmental action would occur. The purpose of the area rate or FPC clauses was simply to permit the producer who committed his gas to the interstate market prior to such action occurring to benefit from such action provided that by governmental decision, he was otherwise permitted to do so. In short, parties agreed to make pricing a matter of governmental decision under circumstances where government chose to act.]

The Commission is unable to conclude that this is an unreasonable interpretation of the intent of the parties to area rate clauses. Nor can we find a compelling public policy basis for precluding this interpretation. We would hold this view even if the area rate clause merely tracked the literal text of § 154.93(b)-(1). To the extent that such clauses reference action to be taken by other governmental authority the persuasiveness of this argument is strengthened. As noted earlier, we cannot find specific Congressional direction that we do so. And we find little basis for our imposing on the parties to the contract an interpretation which is contrary to the intent that they ascribe to their agreement simply on the ground that the rates were prescribed by the Congress and not by the Commission, or on the basis

that the increased rate levels were not evolved through a cost-based rate methodology or were not adequately cost justified.⁴¹ Inasmuch as the Congress has determined to abandon cost-based methodologies in favor of statutory ceiling prices, we find it difficult to conclude that the Congress nonetheless intends this Commission in the exercise of its continuing authority under the Natural Gas Act to act, on its own motion, to prevent reliance on area rate clauses as contractual authority for the Natural Gas Policy Act ceiling prices in circumstances where both parties to the contract interpret their bargain to permit price escalation to those statutory ceiling prices.

Accordingly, in the first instance and as a general matter,⁴² the Commission will give effect to the intention of the parties and permit reliance on area rate clauses for the requisite contractual authority in interstate sales contracts to permit escalation to the Natural Gas Policy Act ceiling prices. This appears particularly appropriate in the case of the ceiling prices established under sections 104 and 106(a) of the Natural Gas Policy Act. While these prices are not specifically prescribed by the Commission in the same way area or nationwide rates were, the section 104 prices are based and inextricably linked to previously prescribed FPC rates. What the Congress did in enacting section 104 was to freeze as of April 20, 1977 the presently lawful FPC rates and to change the escalation factors from those estab-

lished by the FPC to a different method required by the Congress.⁴³

As explained by Congressman Dingell on behalf of the House floor managers at the time the Natural Gas Policy Act was considered, the section 104 rates "incorporate by reference" the Commission-prescribed rates.⁴⁴ As Panhandle Eastern Pipeline Company and Trunkline Gas Company put the matter in their joint written comments, "the section 104 rates are the historical, regulatory and contractual progeny of the just and reasonable rates resulting from the area rate proceedings under the Natural Gas Act".

As noted earlier the Commission does not intend to have its comments respecting the operation of area rate clauses be viewed as an attempt to speak in a dispositive way to this subject. Rather our intent is merely to express an administrative view of this matter to provide some guidance to the parties in interest as to how the Commission intends to discharge its responsibilities under the Natural Gas Policy Act and the Natural Gas Act. As the comments and these proceedings make abundantly clear, some parties ascribe a different interpretation to the operation of area rate clauses and it is the Commission's view that we must provide a forum to permit protest to be made to the utilization of area rate clauses as contractual authorization for the Natural Gas Policy Act prices.

⁴¹Another point should be made at this juncture. In the Notice of Proposed Rule-making, the Commission stated that it did not believe that a reference to a "successor authority" could be interpreted to include the Congress. We now reverse that position. We find convincing the arguments that the Congress, in the exercise of direct rate-making authority, has replaced and, in that sense, succeeded to the Commission's exercise of responsibility in this matter. On the other hand, we take cognizance that one party to a contract which contains an area rate clause, Consolidated Gas Supply Corporation, would interpret a clause which calls for price escalation to levels prescribed by the Commission "or successor Governmental authority" as not permitting escalation to the Natural Gas Policy Act prices. Consolidated's view is that it had contractually bound itself only to the outcome of agency-type hearings in which administrative protections not available in the legislative process were present. These would presumably include the opportunity to protest in an administrative proceeding, to require agency findings, and to obtain judicial review. Consolidated should not be precluded from pursuing that view of the matter. And the Commission intends no such result. We are simply withdrawing from the assertion that under a "plan meaning" construction of the contract the Congress could not be considered a "successor".

⁴²95 Cong. Rec. H 13117 (daily ed. October 14, 1978). Statement of Congressman John D. Dingell.

⁴³Rate-making is a legislative function exercised under the interstate commerce clause of the United States Constitution, Art. I, § 8, clause 3. *Prentiss v. Atlantic Coast Line Co.*, 211 U.S. 210, 226 (1908). See also: *Munn v. Illinois*, 94 U.S. 113, 133-34 (1877); *Ohio Valley Co. v. Ben Avon Borough*, 253 U.S. 287, 289 (1920); 253 U.S. 287, 289 (1920); *Morgan v. U.S.*, 279 U.S. 468, 279 (1936); *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945). The Commission has exercised this function, by delegation from the Congress in the Natural Gas Act, with respect to producer sales since 1954. *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954). By enacting the NGPA with the exception of the provisions in sections 104(b)(2), 106(c), 107(b) and 109(b)(2), which give the Commission the authority to set rates in excess of the NGPA ceiling prices, the Congress has rescinded that much of its rate-setting authority as it had delegated to the Commission under the Natural Gas Act. And the Congressional action provides legislatively set rates for the same period that would have been the subject of the latest Commission biennial review, thus obviating the necessity for this Commission to conclude or take further action with respect to that proceeding.

⁴⁴The same is generally true of the section 106 price ceilings applicable to rollovers of interstate contracts, although here the Congress also added a specific formula which approximates previous FPC prescribed rates.

³⁹See, oral presentation of New York Public Service Commission in oral argument before the Commission on February 27, 1978.

⁴⁰See, *Louisiana-Nevada Transit Co. v. Woods*, 383 F. Supp. 177 (1975).

⁴¹Comments of Michigan Wisconsin Pipe Line Company filed January 18, 1979, in Docket No. RM79-3 at 1.

D. DECISION

On the basis of the foregoing analysis, the Commission arrives at the following decisions:

1. Existing Interstate Sales Contracts.

To the extent that the Natural Gas Act remains applicable to an existing interstate contract, the provisions of §154.93 of the Commission's regulations, which have been promulgated under that Act, do not preclude the operation of price escalation provisions in a contract, the terms of which specifically permit escalation to Congressionally or legislatively authorized prices or which specifically reference Natural Gas Policy Act prices. Also, the Commission will, in the absence of specific contractual language to the contrary, generally interpose no objection to the parties to an interstate contract ascribing an interpretation to an area rate clause in its contract as would authorize escalation to, and collection of, the Natural Gas Policy Act price ceilings.

In the event that interstate pipeline purchasers contest the use or reliance by sellers on area rate clauses in their contracts, the Commission will provide an opportunity to protest. Once a protest to contractual authorization is submitted, the Commission will then consider the matter and attempt to state its view. Other parties in interest, including state commissions, local distribution companies and other aggrieved parties will be permitted to participate in any such proceeding.⁴⁶

⁴⁶The process of determining whether the subject contract authorizes the rate increase could take many forms. Some guidance can be gleaned from our handling of similar questions under the Federal Power Act. In those instances where a contract-based challenge is raised, the Commission has resolved the question in one of two ways. If the protest asserts that the contract language is sufficient to resolve the matter, then the Commission has in the past examined the language in light of its experience and the arguments raised in the protests and rendered a decision. Where, however, the protest asserts that the language itself is not sufficient and parol evidence is needed, for example, because action of the parties subsequent to execution of the contract has modified the contract or the contract is ambiguous, then the Commission has entertained additional pleadings on the contested matter. (See, *Gulf States Utilities v. FPC*, 518 F.2d 450 (D.C. Cir. 1975); *Appalachian Power Co. v. FPC*, 529 F.2d 342 (D.C. Cir. 1976); *Indiana & Michigan Electric Co. v. FPC*, 530 F.2d 1060 (D.C. Cir. 1976)). The Commission generally has not found it necessary to resort to formal, adjudicatory hearings to decide these cases but that course of action may be appropriate in some circumstances. A protest petition should make specific reference to the applicable producer rate schedule (i.e. contract), assert the basis for the protest, and supply such further information as the protestant believes will assist the Commission or is rele-

Also, such parties may protest the utilization of area rate clauses even in the face of agreement among the parties to the contract as to the interpretation which should be ascribed to such clauses. In this event, however, the Commission advises that considerable weight will be given to the interpretation ascribed to the contract by its parties.

Because it is the Commission's general view that area rate clauses may be relied on by the parties to a contract as authority for an increase in rates to Natural Gas Policy Act statutory ceilings, and specifically because our analysis suggests that area rate clauses would appear to have been triggered at least with respect to the rates under sections 104 and 106(a) of the Natural Gas Policy Act, the Commission concludes that it is neither necessary nor appropriate to revise our blanket affidavit procedures provided in Commission Order Nos. 15 and 15-A (§154.94 of the Commission's regulations under the Natural Gas Act) other than to extend the date for filing a protest. That section of our regulations currently provides that "neither the filing of a blanket affidavit nor the acceptance for filing of such an affidavit by the Commission, will affect any person's contractual right to purchase natural gas at a rate which is less than the applicable maximum lawful price under the Natural Gas Policy Act."⁴⁷ Also, the *Mobile-Sierra* line of cases makes clear that a rate increase under the Natural Gas Act in the absence of contractual authority is a "nullity" whether the rate was accepted by the Commission or not.⁴⁸

Accordingly, if it is ultimately determined on the basis of a final nonappealable order of this Commission, or if it is ultimately found by a court, that an area rate clause did not, in fact, provide the requisite contractual authority for the rate increase, the producer would be under the obligation to return the monies collected for which there did not exist contractual authority and, under standard PGA provisions, these monies would be required to be flowed-through to the consumer. It is our view, moreover, that the standard rate of interest applicable to refunds under Commission regulations would apply to any such amounts required to be paid back and flowed-through to purchasers. Accordingly, in any case in which a challenge

is made to the utilization of or reliance on an area rate clause as authorization to collect the Natural Gas Policy Act statutory rates, it is unnecessary for the Commission to specifically suspend and require that the amounts in dispute be collected subject to refund.

Thus, the Commission will establish a general protest procedure in which parties in interest can petition the Commission for a specific determination as to whether a particular contractual clause constitutes the requisite authority to charge and collect Natural Gas Policy Act rates. In light of the administrative difficulties, complexities and general practical problems which attend the transitional period, the Commission will amend its protest procedures contained in §154.94 to allow for filings of protests within the later of 90 days after filing of an affidavit, or May 1, 1979. Similarly, protest to interim and retroactive collection filings may be filed within the later of 90 days of the filing of notice to the Commission, or May 1, 1979.⁴⁹ The Commission, for practical administrative reasons and in order to give some certainty to these matters, will not entertain protests filed after that date. Of course, parties in interest may still be able to resort to the courts to seek resolution of the question.

2. Existing Intrastate Sales Contracts.

As a general matter, fixed price and indefinite price escalator clauses in existing intrastate contracts may permit escalation of the price under the contract in accordance with the terms of that contract. In a case where section 105(b)(1) of the Natural Gas Policy Act applies, escalator clauses may permit an increase in the contract price up to but not in excess of the current new natural gas price under section 102 of the Natural Gas Policy Act.⁵⁰ Questions of contract interpretation are left, in the first instance, to the parties to the contract. In the event of their disagreement, the question should be left to state courts to resolve.

Of course, where section 105(b)(1) applies, while the matter of contract interpretation of existing intrastate contracts is generally to be left to the parties, the parties cannot ascribe an interpretation to their contract which contradicts or is inconsistent with the

⁴⁷The Commission notes that under the Natural Gas Act, a unilateral rate increase filing inconsistent with the applicable contract between the parties is invalid, and need not be suspended within 30 days after it is filed.

⁴⁸If, however, the producer claims eligibility for a price higher than the 105(b)(1) price—e.g., the price under section 108, escalator clauses may be relied on to obtain the higher price for that production which is determined to qualify for the higher price.

⁴⁹Section 154.94(h)(7).

⁵⁰See, n. 13, *supra* at 13.

terms of the contract as they were in effect on November 9, 1978 (the date of enactment of the Natural Gas Policy Act).

In order to give some guidance to the parties on how the Commission intends to discharge its administrative and enforcement responsibilities pursuant to section 501 of the Natural Gas Policy Act, the Commission believes it must responsibly address the question of the operation of FPC-type clauses. Consistent with our discussion and analysis of this matter concerning area rate clauses in interstate contracts of which FPC-type clauses are the functional equivalent, it is our view that the parties may interpret such clauses (consistent with their terms) as providing contractual authority to escalate to applicable Natural Gas Policy Act statutory prices.

Finally, because the Commission has revised its view concerning the operation of area rate clauses and FPC-type clauses in existing interstate and intrastate contracts, the Commission will not give further consideration at this time to the issues raised in the proposed rulemaking concerning the authority of the parties to these contracts to amend their terms. Such questions will be addressed in a subsequent interpretative order of the Commission.

IV. EFFECTIVE DATE

The amendments discussed above will be effective immediately, pursuant to a finding of good cause under 5 U.S.C. 553(d)(3). According to industry practice, producers, under ordinary circumstances, would have billed in January 1979 for deliveries made in December 1978, the effective date of the ceiling prices under the Natural Gas Policy Act. This order has a significant impact on the amount that parties may lawfully bill for such deliveries. The Commission believes it is important to inform parties to natural gas purchase contracts concerning the amounts they are permitted to collect at the earliest possible moment. Accordingly, we believe that good cause exists to make these amendments effective immediately.

The Commission notes that the precise rules we are adopting have not been specifically included in a general notice of proposed rulemaking under 5 U.S.C. 553(b). However, the original version of § 270.205 was published on December 1, 1978, and the public has had opportunity to file comments since that time. Moreover, the Commission has separately requested comments concerning § 270.205, issued a separate notice of proposed rulemaking, and held oral argument on January 19, 1979 and February 27, 1979, confined solely to issues concerning the effect of the Natural Gas Policy

Act on price escalator clauses in existing contracts. We believe that, through the above-described procedures, parties have received ample notice and have had sufficient opportunity to participate in the formulation of our decision.

APPENDIX

SUMMARY OF OTHER COMMENTS RESPECTING INTERSTATE CONTRACTS

This appendix attempts to identify other major comments which have been filed in this proceeding. The comments have addressed a number of issues in addition to that of contractual intent of the parties. Failure to refer to specific comments or arguments either in the body of the Commission's opinion or in this appendix should not be considered an indication that the comments have not been considered.

1. *The Area Rate Clause in Interstate Contracts.* Several members of Congress have addressed themselves to the issue of Congressional intent. Among these is Senator Pete Domenici of New Mexico.¹ The Senator stated that his understanding of the Congressional intent was for existing area rate clauses to provide contractual authorization for collection of all prices under the Natural Gas Policy Act. The Senator reasoned that since section 601(b)(1)(A) of the Natural Gas Policy Act declares the ceiling prices established therein rates just and reasonable, area rate clauses encompass these prices. The Senator also asserted that if producers are denied the ceiling prices under their existing contracts then those producers who drilled wells during 1977 and 1978 in reliance on the Commission's commitment to set a national rate for that biennium would be penalized.²

Representative Clarence Brown argues that section 101(b)(5) of the NGPA expressed Congressional intent to permit sellers to collect the highest price for which their natural gas is eligible.³ To hold that escalation clauses prohibit such collection is, according to the Congressman, contrary to such

Congressional intent.⁴ The Congressman also represented that the proposed rule would prevent any natural gas which is now sold under existing interstate contracts from receiving the higher incentive prices established by sections 102, 103, 107 and 108. Congressman Brown asserts that as a result of the proposed rule, price disparity between natural gas sold in interstate and intrastate commerce will increase, in contravention of the Congressional policy of gradually abolishing the duality of price between the two markets.⁵

Senator J. Bennett Johnston, Jr. also urged the Commission to permit sellers to collect Natural Gas Policy Act prices on the basis of area rate clauses. In support of this suggestion, he cites Congressional awareness that the Federal Power Commission had uniformly treated area rate clauses as authorizing payment and collection of new vintage rates.⁶

Congressman David Treen, in remarks made at the Commission's February 27 oral argument, also stated that the proposed rule runs counter to Congressional intent. He argued that the statute specifically addresses the question of escalator clauses in three circumstances alone. Congressman Treen suggests that the specific references in these three situations, combined with the failure of the NGPA to include a general provision regarding escalator clauses, is evidence of Congressional intent for existing interstate contracts to authorize collection of NGPA prices.⁷

Congressman John D. Dingell provided an analysis of the salient statutory provisions⁸ and suggested several rationales upon which the Commission could permit collection of the NGPA ceiling prices. In his remarks, Congressman Dingell noted that the section 104 prices were designed to take the FPC determined wellhead prices and keep them constant in real dollars by escalating the prices monthly to account for inflation. He urged the Commission to construe area rate clauses as authorizing the collection of the section 104 prices. Chairman Dingell also noted that the incentive prices under sections 102, 103 and 107 would apply to natural gas determined to qualify for those prices. This natural gas would no longer be subject to the provisions and requirements of the Natural Gas Act pursuant to section

¹ See Comments of Senator Pete Domenici filed January 18, 1979, in Docket No. RM79-3; see also Statement of Senator Pete Domenici filed February 27, 1979, in this docket, and oral argument February 27, 1979, Tr. 3-10.

² Statement of Senator Pete Domenici filed February 27, 1979, in Docket RM79-22, pp. 3, 4.

³ Section 101(b)(5) reads as follows:

(5) SALES QUALIFYING UNDER MORE THAN ONE PROVISION: If any natural gas qualifies under more than one provision of this title providing for any maximum lawful price or for any exemption from such a price with respect to any first sale of such natural gas, the provision which could result in the highest price shall be applicable.

⁴ Comments of Representative Clarence Brown filed January 18, 1979, in Docket No. RM79-3.

⁵ *Id.*

⁶ Comments of Senator J. Bennett Johnston, Jr. filed January 18, 1979, in Docket No. RM79-3.

⁷ Oral argument February 27, 1979, Tr. 21-23.

⁸ Comments filed January 19, 1979, in Docket No. RM79-3.

601. Therefore, he believes that even "impermissible" clauses can operate to authorize collection of such prices. Contractual amendments would also be permitted. Finally, with regard to section 108, the Congressman would suggest that area rate clauses are triggered to permit collection of the 108 price under a reading of sections 101(b)(6) and 601(b)(1).⁹

The Secretary of Energy, James R. Schlesinger, also filed comments in this proceeding discussing Congressional intent.¹⁰ The Secretary stated that based upon the policy purposes of the statute (to create a national market as well as to provide increased domestic prices) the Commission should not interpret area rate clauses as proposed in the rule. Rather, the Secretary stated, that by force of the Commission's own regulations there was only one alternative for producers to utilize to contract for higher prices in the future: area rate clauses. The Secretary noted that all studies anticipated that these clauses would permit collection of the ceiling prices, including section 108 prices but especially section 104 prices.

Representative Toby Moffett¹¹ and Senator Jim Sasser,¹² on the other hand, support the Commission's proposed rule as it applies to area rate clauses in interstate contracts. Congressman Moffett states that the proposal is consistent with Congressional intent as expressed on page 83 of the Statement of Managers. He further suggests that incentive prices, as embodied in sections 102, 103, 107 and 108 of the NGPA, are not applicable to currently flowing gas.¹³ Senator Sasser cites the Conference Report for the proposition that the statutory rates are only ceiling prices.¹⁴

Other parties cited Congressional intent in support of the proposed rule. For example, the Public Utilities Commission of the State of California referred to the discussion at page 83 of the Statement of Managers as evidence that "the bill's drafters were familiar with and approved of the bar against indefinite price escalator clauses in interstate contracts as then enforced by the Commission."¹⁵ Comments filed by a group of gas consumers cite section 101(b)(9) of the statute as evidence that Congress did not

intend to supersede contract prices,¹⁶ and argue that area rate clauses do not permit collection of maximum lawful prices under the Natural Gas Policy Act.

2. *Continued Natural Gas Act Jurisdiction.* In response to comments by many of the participants in this proceeding,¹⁷ we expressly note the effect of section 601(a)(1) of the Natural Gas Policy Act on certain types of committed or dedicated natural gas. That provision provides that the Commission's Natural Gas Act jurisdiction over committed or dedicated natural gas ceases as to first sales under sections 102(c), 103(c) and 107(c) of the statute. Therefore, once a determination of eligibility under the above sections becomes final, the Commission's authority under the Natural Gas Act to limit or otherwise regulate the operation of contractual provisions terminates. The comments point out that this result applies both to previously impermissible clauses and area rate clauses.

3. *Variant Clauses.* Reference in the proposed rule to "variant clauses" has engendered considerable comment. The original Commission view was that a "variant clause"—any escalation provision that does not precisely reflect the precise language of § 154.93(b-1)—was inoperative to the extent its scope exceeded that of the permissible area rate clause.

In response to the comments received, the order has been revised to permit "variant clauses", which by their terms are triggered by passage of the Natural Gas Policy Act or which provide for escalation to the highest applicable rate prescribed by legislation to be operative according to their terms.¹⁸ The notice issued on February 13, 1979 suggested that such clauses were in violation of § 154.93, and therefore would not be given effect.

4. *Contract Amendment.* The Commission's Notice of Proposed Rulemaking stated that although area rate clauses did not constitute contractual authorization for the statutory ceiling prices, the parties to existing interstate contracts could amend their agreements to provide for the payment and collection of any applicable maximum lawful price. The Commission further provided that any such amendment would be permitted to operate retroactively to December 1,

1978, and that interstate pipelines would be permitted to pass through increased costs attributable to contract amendments so long as the modification was agreed to in arms-length bargaining, and provided the Commission did not find "fraud, abuse or similar grounds" existed.

This particular aspect of our proposal has been the subject of a great deal of critical comment. Representative Toby Moffett stated that our "proposals allowing retroactive treatment to December 1, 1978 raise serious problems. The legislative history and the views expressed by Conferees in public meetings showed a strong desire to protect contract sanctity."¹⁹ The Congressman further suggested that it is "unreasonable to expect customers to pay additional prices for gas already delivered."²⁰

Other criticism expressed concern from a different point of view. For example, the New York Public Service Commission, citing the *Mobile-Sierra* doctrine, argued "It is clear that contractually authorized rate increases cannot be made effective retroactively and *** only the filed rate can be charged."²¹ The Michigan Public Service Commission²² and others²³ made the same argument. New York also argues that the retroactive amendment proposal is inconsistent with the NGPA and other Interim Regulations issued thereunder. New York states that, although section 601(a)(1)(B) of the statute makes the Natural Gas Act inapplicable to certain committed or dedicated gas, the Natural Gas Policy Act itself requires that there be contractual authorization at the time deliveries of gas are made. New York further states that, although the Conference Report (at page 120) mentions retroactive collection of Natural Gas Policy Act ceiling prices in certain circumstances, it does not permit the Commission to authorize retroactive contract amendments.²⁴ New York also rejects the FERC's attempt to justify retroactively on equitable grounds.²⁵

¹⁹ Comments of Representative Toby Moffett, filed February 27, 1979 at 2.

²⁰ *Id.*

²¹ Comments of the New York Public Service Commission filed February 26, 1979 at 8, citing *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246 (1951).

²² Comments of the State of Michigan and the Michigan Public Service Commission filed February 27, 1979 at 5-7.

²³ Comments of the South Dakota Public Utilities Commission and the Minnesota Public Service Commission, filed January 31, 1979 in Docket No. RM79-3, at 2, 3.

²⁴ New York Comments, *supra*, at 9, 10.

²⁵ *Id.* at 9. New York is referring to the Commission's statement in the notice of proposed rulemaking that since the enactment of the Commission's policy concerning area rate clauses did not come until

Footnotes continued on next page

⁹ *Id.*

¹⁰ Comments of James R. Schlesinger, Secretary of Energy filed February 26, 1979 in Docket No. RM79-3.

¹¹ Comments of Representative Toby Moffett filed February 27, 1979.

¹² Comments of Senator Jim Sasser filed February 27, 1979.

¹³ Comments of Representative Toby Moffett, at p. 1.

¹⁴ Comments of Senator Jim Sasser, at p. 2.

¹⁵ Comments of the Public Utilities Commission of the State of California, filed February 27, 1979 at 3.

¹⁶ Comments of Indicated Intrastate and Interstate Gas Consumers, filed in Docket No. RM79-3, Attachment B at 2.

¹⁷ See, e.g., New York Public Service Commission comments filed February 27, 1979 at 7; see also, Statement of Shell Oil Company filed February 27, 1979, at 24-26; Statement of the Honorable John D. Dingell filed January 19, 1979.

¹⁸ See, Comments of the New York Public Service Commission filed February 26, 1979 at 7. See also, Comments of Chevron, U.S.A., Inc., filed February 27, 1979, at 6.

Laclede Gas Company stated that the Commission should not rely upon contractual amendment to circumvent its policy determination. Laclede urges the Commission to decide the issue unequivocally and "not pass the responsibility, and liability, for decision on to the Nation's pipelines."²⁶

5. *Pipeline Passthrough.* Many participants have criticized the proposed rule's approach to pipeline passthrough of increased costs resulting from contract amendments. The Commission proposed that it would permit passthrough of these costs so long as the modifications were the result of "arms-length bargaining," and provided that there was no "fraud, abuse, or similar grounds". Comments on this issue range from assertions that the rule, although conceptually sound, provides insufficient guidance, to statements that the proposed policy is unjustifiable on its merits.

Associated Gas Distributors (AGD) argue that the Commission should provide a working definition of arms-length bargaining which among other things recognizes that adequate consideration is needed to support a bona fide contract amendment.²⁷ AGD also would place the burden of showing adequate consideration on the producer-seller. Alabama Gas Corporation and Indicated Intrastate and Interstate Gas Consumers also support the view that adequate consideration is necessary to effect a valid contract amendment.²⁸

The majority of interstate pipelines filing comments in this proceeding agreed that the intent of the parties to the contract was controlling. However, many of the pipelines were concerned that they be guaranteed the passthrough of payments made pursuant to a contractual amendment. The interstate pipelines were also concerned with the meaning of the term "arms-length" transactions.²⁹

The Commission has reconsidered its opinion in light of the comments

filed and in consideration of the Commission's opinion that contractual intent of the parties control. By effectuating the intent of the parties, the need for contract amendment decreases substantially. The Notice of Proposed Rulemaking would have permitted such amendments to operate retroactively to December 1, 1978, provided the parties agreed to such retroactivity. The Commission explained that fairness to the parties required that we permit such retroactivity. Several comments expressed the view that the Commission would be acting beyond the scope of its authority in permitting contract amendments to operate retroactively. The action we are taking today, in giving effect to the intent of the parties, obviates the need to address the retroactivity of any amendment.

6. *State Jurisdiction.* The State of Michigan and the Michigan Public Service Commission (Michigan), both in written comments³⁰ and at oral argument, have suggested that the FERC speak to the relationship of our action in this docket to the jurisdiction of state regulatory agencies. Michigan states that the proposed rule fails to acknowledge the jurisdiction of the states to restrict or regulate the operation of escalator clauses in interstate commerce. The order of the Commission does not deal with this question, but we wish to make clear, if there is any doubt, it is not our intention to intrude into the jurisdiction that the Congress has left to the states to establish lower ceiling prices with respect to production occurring in that state.³¹

7. *Comments on Intrastate Contracts.* Several parties have commented concerning the application of the proposed rule and the Commission's underlying discussion to existing intrastate contracts. The Southern Union Company, a New Mexico distribution company, asserts that the effect of the proposed rule will be to discourage production on undeveloped acreage which is subject to existing intrastate contracts. Southern Union states that it is a party to a number of contracts with no escalation provisions, or with nominal fixed escalations. If such a contract is subject to section 105(b)(1) of the Natural Gas Policy Act, it may not be amended to effect a price increase above the price paid on November 9, 1978. Accordingly, Southern Union argues a producer would be unwilling to dedicate additional undeveloped acreage to the contract.³²

Indicated Consumers disagree with the proposed rule to the extent that it

would permit a seller of gas to receive a price above the section 102 price. Indicated Consumers argue that section 105 sets a mandatory price ceiling which may not be exceeded even for particular wells which qualify under various other Title I wellhead pricing provisions. Indicated Consumers further argue that to the extent the Commission leaves interpretation of contracts to the parties it is violating section 501(a) of the Natural Gas Policy Act which calls for the FERC to administer the statute.

Mountain Fuel Supply Company states that in some circumstances the proposed rule would discriminate against the intrastate market. If a producer has an intrastate contract subject to section 105(b)(1) of the Natural Gas Policy Act that contains an FPC clause and no other escalation provision, he would be unable to amend his contract to collect higher statutory prices. An interstate seller could, however, amend his contract and collect prices under sections 102, 103, 107 and 108.³³ On a related issue, Hawthorne Oil and Gas Corporation takes exception to our proposed interpretation of FPC clauses which refer to "successor governmental authority".³⁴ Northwest Arkansas Producers Group suggests that this interpretation is inconsistent with the general intention of the Commission, expressed at page 40 of the Notice, to leave initial interpretation of intrastate contracts to the parties.³⁵

Mesa Petroleum Company also criticized this interpretation. Mesa asserts that it is illogical for the Commission to interpret FPC clauses in intrastate contracts in the same way as area rate clauses in interstate contracts. To make such an interpretation merely for consistency's sake is, according to Mesa, to ignore the actual intent of the parties. While intent of the parties to an interstate contract may be construed in light of FPC regulations, such is not the case with intrastate contracts. Mesa states, "Parties negotiating an intrastate contract were not inhibited by *** regulatory restraints; their concern was to contract for the best possible price initially and, during the term of the contract, a price at least as high as any seller in the interstate market was permitted charge."³⁶

Finally, as the order notes, the Commission has revised its view concerning the operation of area rate clauses and

Footnotes continued from last page.

after the effective date of the NGPA, contract amendments made in response to the rule should be permitted to operate retroactively to that date.

²⁶Comments of Laclede Gas Company filed February 27, 1979, in Docket No. RM79-22, p. 3.

²⁷See, Comments of Associated Gas Distributors filed February 27, 1979 in Docket No. RM79-22.

²⁸See, Comments of Alabama Gas Corporation filed February 27, 1979 in Docket No. RM79-22, and Comments of Indicated Intrastate and Interstate Gas Consumers Regarding Proposed Rules filed February 27, 1979 in Docket No. RM79-22.

²⁹See, e.g., Natural Gas Pipeline Company of America filed February 27, 1979 in Docket No. RM79-22; Comments of Texas Gas Transmission Corporation filed February 27, 1979 in Docket No. RM79-22 and Comments of Interstate Natural Gas Association of America filed February 27, 1979 in Docket No. RM79-22.

³⁰Comments filed February 27, 1979, in Docket No. RM79-22 at 7, 8; Tr. at 295.

³¹See section 602, Natural Gas Policy Act.

³²Comments of Southern Union Company, filed February 27, 1979, at 2-4.

³³Comments of Mountain Fuel Supply Company filed February 27, 1979, at 6. Lone Star Gas Company also raised this question in its comments filed February 27, 1979, at page 4.

³⁴Comments of Hawthorne Oil and Gas Corporation, filed February 26, 1979.

³⁵Comments of Northwest Arkansas Producers Group, filed February 26, 1979, at 3.

³⁶Comments of Mesa Petroleum Company, filed February 26, 1979, at 5.

FPC-type clauses in existing interstate and intrastate contracts, therefore, the Commission will not give further consideration at this time to the issues raised in the proposed rulemaking concerning the authority of the parties to these contracts to amend their terms. Such questions will be addressed in a subsequent interpretative order of the Commission.

(Natural Gas Act, as amended.) (15 U.S.C. 717, *et seq.*, Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350, E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 154 of Subchapter E and Parts 270 and 273 of Subchapter H, Chapter I Title 18, Code of Federal Regulations, are amended as set forth below, effective immediately.

By the Commission. Commissioner Holden voted no.

KENNETH F. PLUMB,
Secretary.

SUBCHAPTER E—REGULATIONS UNDER THE NATURAL GAS ACT

PART 154—RATE SCHEDULES AND TARIFFS

1. Section 154.94 is amended in paragraph (h)(7) by adding at the end thereof the following new sentence: "For special rules respecting contractual authorization to collect NGPA rates, see § 270.205."

2. Section 154.94 is amended by revising subparagraph (8) of paragraph (h) to read as follows:

§ 154.94 Changes in rate schedules.

(h) *Blanket filing.*

(8) *Protest procedure.* Any protest to an affidavit required to be filed under this paragraph shall be filed within 90 days of the filing of such affidavit, or May 1, 1979, whichever is later.

3. Section 154.94 is amended by revising paragraph (i) to read as follows:

§ 154.94 Changes in rate schedules.

(i) *Interim and retroactive collections—(1) Filings.* Compliance with the applicable filing requirements imposed by §§ 273.201(c), 273.202(d), 273.203(c), and 273.204(c)(3) of this chapter shall be deemed to satisfy the requirements of paragraph (b) of this section and section 4(d) of the Natural Gas Act for first sales of natural gas to which the Natural Gas Act remains applicable and for which an interim or retroactive collection is authorized by Part 273 of this chapter. The 30 day notice otherwise required by section 4(d) of the Natural Gas Act is waived.

(2) *Contractual authorization.* Neither the filing described in paragraph (i)(1) of this section nor the acceptance of such filing by the Commission, will affect any person's contractual right to purchase natural gas at a rate which is less than the applicable maximum lawful price under the NGPA.

(3) *Protest.* Any protest to a filing under paragraph (i)(1) of this section shall be made no later than 90 days after such filing is made, or not later than May 1, 1979, whichever is later. If protest is made with respect to a filing under paragraph (i)(1) of this section, on the grounds of lack of contractual authorization, then notwithstanding § 273.302(f) of this chapter, any refund obligation under § 273.302 of this chapter, shall continue until contractual authorization is established or until refund is made in accordance with the direction of the Commission.

SUBCHAPTER H—REGULATION OF NATURAL GAS SALES UNDER THE NATURAL GAS POLICY ACT OF 1978

PART 270—RULES GENERALLY APPLI- CABLE TO REGULATED SALES OF NATURAL GAS

(4) Section 270.205 is revised, including the caption to read as follows:

§ 270.205 Contractual authorization to collect NGPA rates.

(a) *Existing interstate contracts.* In the case of an existing contract for a first sale of natural gas to which the Natural Gas Act applies:

(1) Any contractual provision for a change in price in such contract which by its terms specifically permits collection of NGPA rates or of maximum lawful prices prescribed by legislation, constitutes contractual authorization to charge and collect the NGPA rates applicable to such first sale.

(2) A contractual provision described in § 154.93 (b-1) (relating to area rate clauses), or similar provision, generally will be considered to constitute contractual authorization to charge and collect an NGPA rate to the extent the parties intended to authorize charging and collection of one or more NGPA rates under the contract.

(b) *Existing intrastate contracts.* In the case of an existing contract (other than a contract to which paragraph (a) applies):

(1) Except as provided in paragraph (b)(2) of this section, any contractual provision for a change in price may operate according to the terms of such provision except that such provision is not operative to authorize a seller to charge and collect an amount in excess of the highest applicable NGPA rate.

(2) If natural gas sold under such contract is subject to section 105(b)(1) of the NGPA and qualifies for no higher maximum lawful price, no contractual provision for a change in the price under such contract may operate to permit a price under the contract in excess of the new natural gas price under section 102 of the NGPA.

(c) *Definition.* For purposes of this section, "NGPA rate" means maximum lawful price prescribed by or under the NGPA (including any price collection of which is authorized by Part 273) of this chapter.

PART 273—COLLECTION AUTHORITY; REFUNDS

5. Section 273.104 is revised to read as follows:

§ 273.104 Cross references.

(a) For special rule applicable to resellers, see § 270.202(b) of this chapter.

(b) For special rules relating to contractual authorization to make interim and retroactive collections, see § 270.205 of this chapter.

(c) For special rule relating to refund obligations where contractual authorization is not established, see § 154.94(i)(3).

[FR Doc. 79-8384 Filed 3-19-79; 8:45 am]

[4810-25-M]

Title 31—Money and Finance: Treasury

SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY

PART 14—RIGHT TO FINANCIAL PRIVACY ACT

Regulations Authorizing a Formal Written Request for Financial Records

AGENCY: Department of the Treasury.

ACTION: Final regulation.

SUMMARY: These regulations authorize Department of the Treasury units to request financial records from a financial institution pursuant to the formal written request procedure established by Section 1108 of the Right to Financial Privacy Act of 1978, 92 Stat. 3697 *et seq.*, 12 U.S.C. 3401 *et seq.*, and set forth the conditions under which such requests may be made. Section 1108(2) of the Right to Financial Privacy Act of 1978 requires that the formal written request be authorized by regulations promulgated by the head of the agency or Department. These regulations enable appropriately designated Department of the Treasury personnel to utilize the

formal written request procedure to obtain financial records.

EFFECTIVE DATE: March 20, 1979.

FOR FURTHER INFORMATION CONTACT:

R. Richard Newcomb, Enforcement Policy Advisor, Office of Assistant Secretary (Enforcement and Operations), Department of the Treasury, Washington, D.C. 20220; (202-566-8022).

SUPPLEMENTARY INFORMATION: On February 2, 1979, the Department of the Treasury published for comment in the *FEDERAL REGISTER*, 44 FR 6753, proposed regulations to authorize Department of the Treasury personnel to request records from a financial institution pursuant to the formal written request procedure established by section 1108 of the Right to Financial Privacy Act of 1978, 92 Stat. 3697 *et seq.*, 12 U.S.C. 3401 *et seq.* The following is a summary of the comments received.

One comment stated that each request should include a statement that financial institutions should consult their counsel to determine whether or not compliance with a formal written request is permitted under applicable state and Federal laws. While we agree that personnel of financial institutions should routinely consult with their counsel to insure that they are correctly performing their obligations under the law, we feel that the routine-izing of internal procedures is a matter to be left to the institutions themselves.

Another comment suggested that our regulations should conform as closely as possible to the regulations issued by the Department of Justice so that financial institutions only have to conform with one set of rules and procedures. It suggested that the best of both should be combined. We agree that it would be easier for all parties if Treasury and Justice regulations are the same or as nearly similar as possible. Staff of the two Departments have met to discuss this suggestion. Though they are not identical they are now similar enough so as to avoid confusion.

Another comment suggested that a separate certification section be added to highlight this requirement. We think this is a good idea and have done so by adding § 14.5.

Another comment correctly pointed out that the legislative history of the Act states that the regulations "should specify the level of employee permitted to make such requests and should state that the authority may not be delegated." Appropriate language has been added in order to reflect this legislative intent.

It was suggested that the regulations contain a listing of the specific law en-

forcement responsibilities of the Department of the Treasury where there is the authority to investigate violations of the law and where no administrative summons or subpoena authority is reasonably available for the purpose. In those instances, the units responsible for the investigations, the persons authorized and circumstances where the request was appropriate should be specified. This suggestion does not appear practicable for a variety of reasons.

First, given the definition of law enforcement inquiry, the list would be quite lengthy. It would be constantly subject to change and would most likely be more confusing than helpful. It simply would not be appropriate to restate in this regulation all of the many possible inquiries that the Treasury Department may conceivably make during a lawful investigation or official proceeding. Nor would it be appropriate to designate specific units or individuals as these frequently change within any governmental structure.

The head of each Departmental unit within the Treasury Department was thought to be the best place to vest the authority to delegate officials to issue the formal written request. Should the financial institution question the authority of the official to issue a formal written request the official could be asked to provide a copy of his delegation.

Several additional points were raised relating to problems facing financial institutions in responding to inquiries, e.g., how the financial institution would know the request was issued by the proper official, whether there was reason to believe that the records sought were relevant to a legitimate law enforcement inquiry, whether the request was authorized by regulations signed by the head of the Department, whether the requesting agency had the authority to investigate violations of the law, whether it had otherwise available administrative summons or subpoena authority, whether the requesting official was acting within his authority, etc. These questions should not pose problems for financial institutions. A financial institution is protected from liability to the customer "if it receives a certificate of compliance with the act required by Section 1103(b) that appears proper and legitimate on its face." H.R. Rep. No. 1383, 95th Cong., 2d Sess. 230 (1978). (Additional views of Rep. La Falce.) Section 1117(c) of the Act, 12 U.S.C. 3417(c) states that any financial institution which makes "a disclosure of financial records pursuant to this title in good faith reliance upon a certificate by any Government authority shall not be liable to the customer for such disclosure."

By virtue of the authority vested in me by 5 U.S.C. 301, Reorganization Plan No. 26 of 1950, and Section 1108 of the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.* a new Part 14 is hereby added to Subtitle A of Title 31 of the Code of Federal Regulations as set forth below.

PART 14—RIGHT TO FINANCIAL PRIVACY ACT

Sec.

14.1 Definitions.

14.2 Purpose.

14.3 Authorization.

14.4 Contents of Request.

14.5 Certification.

AUTHORITY: Sec. 1108, Right to Financial Privacy Act of 1978, 92 Stat. 3697 *et seq.*, 12 U.S.C. 3401 *et seq.*; (5 U.S.C. 301); and Reorganization Plan No. 26 of 1950.

§ 14.1 Definitions.

For purposes of this regulation, the term:

(a) "Financial institution" means any office of a bank, savings bank, card issuer as defined in Section 103 of the Consumer Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative bank), credit union, or consumer financial institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(b) "Financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(c) "Person" means an individual or a partnership of five or fewer individuals.

(d) "Customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name.

(e) "Law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of or failure to comply with any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

(f) "Departmental unit" means those offices, divisions, bureaus, or other components of the Department of the Treasury authorized to conduct law enforcement inquiries.

(g) "Act" means the Right to Financial Privacy Act of 1978.

§ 14.2 Purpose.

The purpose of these regulations is to authorize Departmental units to request financial records from a finan-

cial institution pursuant to the formal written request, procedure authorized by Section 1108 of the Act, and to set forth the conditions under which such requests may be made.

§ 14.3 Authorization.

Departmental units are hereby authorized to request financial records of any customer from a financial institution pursuant to a formal written request under the Act only if:

(a) No administrative summons or subpoena authority reasonably appears to be available to the Departmental unit to obtain financial records for the purpose for which the records are sought;

(b) There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry and will further that inquiry;

(c) The request is issued by a supervisory official of a rank designated by the head of the requesting Departmental unit. Officials so designated shall not delegate this authority to others;

(d) The request adheres to the requirements set forth in § 14.4; and

(e) The notice requirements set forth in Section 1108(4) of the Act, or the requirements pertaining to delay of notice in Section 1109 of the Act are satisfied, except in situations where no notice is required. (e.g., Section 1113(g))

§ 14.4 Contents of Request.

The formal written request shall be in the form of a letter or memorandum to an appropriate official of the financial institution from which financial records are requested. The request shall be signed by an issuing official of the requesting Departmental unit. It shall set forth that official's name, title, business address and business phone number. The request shall also contain the following:

(a) The identity of the customer or customers to whom the records pertain;

(b) A reasonable description of the records sought;

(c) Any other information that the issuing official deems appropriate, e.g., the date on which the requesting Departmental unit expects to present a certificate of compliance with the applicable provisions of the Act, the name and title of the individual to whom disclosure is to be made, etc.

In cases where customer notice is delayed by a court order, a copy of the court order shall be attached to the formal written request.

§ 14.5 Certification.

Prior to obtaining the requested records pursuant to a formal written request, an official of a rank designated by the head of the requesting Departmental unit shall certify in writing to the financial institution that the Departmental unit has complied with the applicable provisions of the Act.

Dated: March 16, 1979.

W. MICHAEL BLUMENTHAL,
Secretary of the Treasury.

(FR Doc. 79-8501 Filed 3-19-79; 8:45 am)

[3710-92-M]

Title 32—National Defense

CHAPTER V—DEPARTMENT OF THE ARMY

(EP 405-1-2)

PART 641—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

Review Before Rejection of Late-Filed Application Requirement

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The present regulation, providing guidance to Corps of Engineers field personnel on implementation of Pub. L. 91-646 concerning the Army's relocation assistance program requires clarification and revision with respect to certain procedural matters. The amendments will benefit the public by requiring review before rejection of late-filed applications, requiring better documentation of certain District Engineer actions, clarifying the definition of net earnings for the purpose of computing the fixed farm or business payment under section 202(c) of the Act, and clarifying other procedural instructions where experience has reflected a need for improved guidance.

EFFECTIVE DATE: March 23, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Garland P. Thompson, 202-693-6786, or write to Chief, Policy and Operations Branch, Homeowners Assistance Division, Real Estate Directorate, Office of the Chief of Engineer, Washington, D.C. 20314.

SUPPLEMENTARY INFORMATION: Since the changes are procedural in nature and do not adversely affect applicants' benefits, notice of proposed rulemaking and the procedures there-to are considered unnecessary.

NOTE.—The Chief of Engineers has determined that this rule does not contain a major proposal requiring preparation of Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: March 7, 1979.

THORWALD R. PETERSON,
Colonel, Corps of Engineers, Executive Director, Engineer Staff.

In consideration of the above, 32 CFR Part 641 is amended by amending §§ 641.2, 641.62, 641.64, 641.85, 641.104, 641.109, 641.196, 641.252, and 641.293 as set forth below:

1. Section 641.2 is amended by adding the following:

§ 641.2 Applicability.

*** It will also be applied to activity on behalf of any client agency for which the Corps serves as real estate agent, unless otherwise agreed with the client agency.

2. Section 641.62 is revised by adding a sentence to paragraph (a)(1), changing the number of former paragraph (a)(9) to (a)(10), and adding a new paragraph (a)(9), as follows:

§ 641.62 Actual Reasonable Expenses in moving.

(a) Allowable moving expenses. (1) *** The circumstances justifying the moving expenses exceeding the 50-mile limitation should be made a part of the record.

(9) In cases of emergency dislocation where permanent replacement housing is not immediately available in the area, all reasonable costs incurred in moving to and occupying temporary housing.

(10) Such other reasonable expenses which, in the opinion of the District Engineer, were necessarily incurred by the displaced person.

3. Section 641.64(b) is revised by adding the following sentence at the end of the paragraph:

§ 641.64 Reasonable expenses in searching for replacement business or farm.

(b) Limitation. *** A discussion of any special circumstances which warrant a search for replacement properties over a wider area than a 50-mile radius will be included with submission to the Chief of Engineers.

4. Section 641.85 is revised to make clarifying editorial changes and delete the two sentences preceding the last sentence. The paragraph as revised reads as follows:

§ 641.85 Net earnings.

The term "average annual net earnings" as used in subsection 202(c) of

the Act means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the 2 taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the District Engineer determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. If a business or farm operation has no net earnings or has suffered losses during the period used to compute "average annual net earnings", it may nevertheless receive the \$2,500 minimum payment authorized by § 641.86.

5. Section 641.104(c)(4) is revised by deleting the last sentence of the paragraph and inserting in lieu thereof the following:

§ 641.104 Differential payment for replacement housing.

(c) * * *

(4) * * * When this is done, the differential payment will be computed as if the dwelling had been purchased, i.e., by determining either the amount, if any which when added to the acquisition cost of the dwelling acquired is necessary to purchase a comparable replacement dwelling or the actual reasonable costs incurred in moving and rehabilitating the dwelling to DSS standards and obtaining temporary housing, and the value of the home-site, whichever is less. When comparable DSS housing is available but the displaced person chooses instead to remove the acquired dwelling for rehabilitation as his replacement home, any temporary housing costs incurred are not to be considered in the computation.

6. Section 641.109(a)(2) is revised to read as follows:

§ 641.109 Advance replacement housing payment in condemnation cases.

(a) * * *

(2) If the amount awarded in the condemnation proceedings as the fair market value of the dwelling acquired plus the amount of the provisional replacement housing payment exceeds the lesser of the price paid for, or the District Engineer's determined cost of, a comparable dwelling, he will refund the excess to the Government. However, in no event shall he be required to refund more than the amount of the

provisional replacement housing payment.

7. Section 641.196(c) is amended by adding the following sentences at the end of the paragraph.

§ 641.196 Expenses Incidental to Transfer of Title to the United States.

(c) * * * Reimbursement for such taxes may be made from Imprest Funds in amounts limited to \$100 per payee and may be made at closing. Payments exceeding \$100 should be processed in the usual manner. At the discretion of the District Engineer, a separate Imprest Fund may be established for this purpose following normal finance and accounting procedures, subject to the same limitation on individual payments.

8. Section 641.252(b) is revised to read as follows:

§ 641.252 Application.

(b) Except as indicated herein, applications for payment of benefits must be filed with the appropriate District Engineer not later than 18 months from the date full payment for the real property acquired is made by the Government, or from the date the displaced person moves from the acquired property, whichever is later. When the property is acquired by condemnation, the date on which the Government has satisfied all awards will be considered as the date of full payment. The District Engineer shall insure that applicants are notified in writing of the filing expiration date three months prior to such date, accompanied by an offer to assist in preparation of the application. If circumstances warrant, the Chief of Engineers may authorize acceptance of a late-filed application; therefore, the District Engineer shall secure approval from HQDA (DAEN-REH-O), Washington, D.C. 20314, before denying any application for late filing.

9. Section 641.293 is revised by designating the present language as paragraph (a) and adding paragraph (b) as set forth below:

§ 641.293 Filing of appeal.

(a) An applicant may file... * * *

(b) Although appeals are to be filed within 180 days after notice to the applicant of an adverse decision, the Chief of Engineers may authorize acceptance of a late-filed appeal under some conditions. Receipt of a late-filed appeal should be reported to HQDA (DAEN-REH-A), Washington, D.C.

20314, with a description of all attendant circumstances, prior to processing any such appeal.

(5 U.S.C. 301; sec. 213, Pub. L. 91-646, 84 Stat. 1894, 1900 (42 U.S.C. 4601, 4633).)

[FR Doc. 79-8324 Filed 3-19-79; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 1026-6]

PART 51—PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Revisions to Requirements for Air Pollution Episode Contingency Plans

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: In this action, the Administrator amends Section 51.16 involving the procedures for preparation of contingency plans for air pollution emergency episodes. As a result of this amendment, the Administrator may, at his discretion, exempt attainment and unclassifiable areas from the requirements for future contingency plan development. Also, the Administrator may limit the requirements for specifying emission control actions to urbanized areas and to major emitting facilities outside the urbanized area.

Reference in § 51.16 to Appendix L (Example Regulations for Prevention of Air Pollution Emergency Episodes) is being modified to clarify the Agency's intended use of the example regulations contained therein. The requirement for acquiring updates of atmospheric stagnation forecasts is being changed to reflect current National Weather Service procedures.

EFFECTIVE DATE: This rulemaking is effective March 20, 1979.

ADDRESSES: U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Control Programs Development Division (MD 15), Research Triangle Park, North Carolina 27711.

FOR FURTHER INFORMATION CONTACT:

Joseph Sableski, Chief, Plans Guidelines Section, at the above address or at 919-541-5437 (commercial) or 629-5437 (FTS).

SUPPLEMENTARY INFORMATION

On September 25, 1978, at 43 FR 43331, EPA proposed to amend the requirements for emergency episode con-

tingency plans by allowing the Administrator to reduce the requirements in certain areas where appropriate. Interested persons were invited to comment on any aspect of this proposal. Consequently, four written comments were received, only one of which contained some criticism of the EPA action. Although all commenters agreed with the intent of the proposed amendment, one commenter felt that EPA should have gone a step further by allowing the exemption of major emitting facilities outside the urban area. Failure to do so, it was claimed, places a disproportionate and unfair burden on such sources. EPA believes that while the major focus of the contingency plan should be the sources in urban areas, large sources outside the urban area represent significant contributors to the air pollution problems in nonattainment areas, particularly during the occurrence of adverse meteorological conditions conducive to air pollution episodes. It should be noted, however, that emergency authority is retained in Sections 303 and 116 of the Clean Air Act so that the State or EPA may call for abatement actions from sources other than major emitting facilities in such areas when, for example, control of major emitting facilities alone may not be sufficient to remedy the problem, or when specific smaller sources are known to be the direct cause of the problem.

EPA wishes to emphasize the fact that the changes being made to give the Administrator certain discretionary authority are to effect future contingency plan development only. EPA does not intend to honor requests that sources be granted exemptions from existing, approved contingency plans, or that attainment or unclassifiable areas in Priority I or II regions be excluded from the requirements of existing, approved plans. Unless an episode occurs, many sources may never be required to undertake the specific abatement action called for in such contingency plans.

IMPACT ASSESSMENTS

EPA's proposed procedures for improving environmental regulations are set forth at 39 FR 37419. EPA has reviewed this regulatory revision in accordance with those procedures and has determined that it does not constitute a "significant" revision or modification as defined therein and therefore does not require an environmental, economic, or energy impact statement.

The comments and EPA's responses will be available for public inspection during normal business hours in EPA's Public Information Reference Unit (PM 213), 401 M Street, SW., Washington, D.C. 20460, telephone: 202-755-2808.

Dated: March 14, 1979.

DOUGLAS M. COSTLE,
Administrator.

§ 51.16 [Amended]

In Title 40, Chapter I, Subchapter C, Part 51, EPA amends § 51.16 as follows:

1. Paragraph (b)(3) is revised to read as follows:

* * *
(b) * * *

(3) Specify adequate emission control actions to be taken at each episode stage. (Examples of emission control actions are set forth in Appendix L.)

2. Paragraph (e)(1) is revised to read as follows:

* * *
(e) * * *

(1) Prompt acquisition of forecasts of atmospheric stagnation conditions and of updates of such forecasts as frequently as they are issued by the National Weather Service.

3. Paragraph (g) is amended by changing the word "or" to "of".

4. Paragraph (h) is added as follows:

* * *
(h) Notwithstanding the preceding requirements of this section the Administrator may, at his discretion:

(1) Exempt from the requirements of this section, those portions of Priority I or II regions which have been designated as attainment or unclassifiable for national primary and secondary standards under Section 107 of the Act;

(2) Limit the requirements pertaining to emission control actions in Priority I regions to:

(i) Urbanized areas as identified in the "1970 Census of Population; Supplementary Report: Population of Urbanized Areas Established Since the 1970 Census, for the United States: 1970," U.S. Bureau of Census, PC(s)-106, U.S. Government Printing Office, Washington, D.C., October, 1976, and

(ii) Major emitting facilities, as defined by Section 169(1) of the Act, outside the urbanized areas.

(Sec. 110, 301(a), Clean Air Act, as amended (42 U.S.C. 7410, 7601).)

[FR Doc. 79-8361 Filed 3-19-79; 8:45 am]

[6560-01-M]

SUBCHAPTER C—AIR PROGRAMS

[FRL 1013-8]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, take no action on changes to the Ventura County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: April 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105, Attn: Douglas Grano. (415) 556-2928.

SUPPLEMENTARY INFORMATION: On September 8, 1978 EPA published a Notice of Proposed Rulemaking for revisions to the Ventura County APCD's rules and regulations submitted on June 22, 1978 by the California Air Resources Board for inclusion in the California SIP.

The changes contained in the above mentioned submittal that are being acted upon by this notice include the following:

- (a) Amendments to definitions,
- (b) Zone boundaries, and
- (c) Open burning amendments.

The Notice of Proposed Rulemaking for this submittal was published on September 8, 1978 (43 FR 40040). No comments were received during the comment period.

Under Section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the submitted regulations as SIP revisions.

It is the purpose of this notice to approve the changes contained in this submittal and incorporate them into the California SIP with the exception of those rules discussed below.

No action is being taken on Rule 23, Exemptions from Permit; Rule 42, Schedule of Fees; Rule 55, Storage of Organic Liquid-Petroleum Products;

and Rule 70, *Storage and Transfer of Gasoline*. Action on these rules will be taken in a separate FEDERAL REGISTER notice.

No action is being taken on Sections B(2)(c) and C of Rule 56, *Open Fires*. Section B(2)(c) is a nuisance rule and is not appropriate for inclusion in the SIP. Section C will be addressed in a separate FEDERAL REGISTER notice.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110, 301(a) of the Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: March 14, 1979.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraph (c)(44)(iii) as follows:

§ 52.220 Identification of plan.

- • • • •
- (c) • • •
- (44) • • •
- (iii) Ventura County APCD.
- (A) New or amended Rules 2, 7, and 56 (with the exception of Sections B(2)(c) and C).
- • • • •

[FR Doc. 79-8363 Filed 3-19-79; 8:45 am]

[6560-01-M]

[FRL 1011-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve changes to the Santa Barbara County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: April 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105, Attn: Douglas Grano, (415) 556-2938.

SUPPLEMENTARY INFORMATION:

On September 8, 1978 (43 FR 40040) EPA published a Notice of Proposed Rulemaking for a revision to the Santa Barbara County APCD's rules and regulations submitted on June 22, 1978 by the California Air Resources Board for inclusion in the California SIP. No comments were received during the comment period.

The change contained in the above mentioned submittal that is being acted upon by this notice concerns open burning of wood wastes for eliminating fire hazards.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions.

It is the purpose of this notice to approve Rule 24.15, submitted on June 22, 1978, and incorporate it into the California SIP.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110, 301(a), Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: March 14, 1979.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraph (c)(44)(ii) as follows:

§ 52.220 Identification of plan.

- • • • •
- (c) • • •
- (44) • • •
- (ii) Santa Barbara County APCD.
- (A) New Rule 24.15.
- • • • •

[FR Doc. 79-8359 Filed 3-19-79; 8:45 am]

[6560-01-M]

[FRL 1073-8]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for Sequoiaboard, Wickes Forest Industries Division of the Wickes Corp., Chowchilla, California

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby issues a Delayed Compliance Order to Sequoiaboard, Wickes Forest Industries Division of the Wickes Corporation. The Order requires the company to bring air emissions from its particle board manufacturing facility at Chowchilla, California into compliance with certain regulations contained in the federally-approved California State Implementation Plan (SIP). Sequoiaboard's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on March 20, 1979.

FOR FURTHER INFORMATION CONTACT:

William M. Thurston, Chief, Case Development Section, Air and Hazardous Materials Branch, Enforcement Division, EPA, Region IX, 215 Fremont Street, San Francisco, California 94105, telephone (415) 556-6150.

ADDRESS: The Delayed Compliance Order, supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing issuance of the Order are available for public inspection and copying during normal business hours at: Enforcement Division Offices, EPA, Region IX, 215 Fremont Street, San Francisco, California 94105.

SUPPLEMENTARY INFORMATION: On July 25, 1978, the Regional Administrator of EPA's Region IX Office published in the FEDERAL REGISTER, 43 FR 32152, a notice setting out the provisions of a proposed Delayed Compliance Order for Sequoiaboard, Wickes Forest Industries Division of the Wickes Corporation, Chowchilla, California. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. In response to the Notice of Proposed Rulemaking Sequoiaboard indicated that they would be unable to meet certain increments in the Order's

compliance schedule due to unavoidable delays in the delivery of control equipment. EPA determined that Sequoiaboard's comment was valid and accordingly, the Order's compliance schedule has been extended by changing the dates in parts I.C., I.D., IV.A. and IV.B. of the Order. No requests for a public hearing were received in response to the proposal notice.

In consideration of the comment received on the proposed Order, a Delayed Compliance Order effective this date is issued to Sequoiaboard, Wickes Forest Industries Division of the Wickes Corporation, Chowchilla, California by the Administrator of EPA pursuant to the authority of Section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The Order places Sequoiaboard, Wickes Forest Industries Division of the Wickes Corporation on a schedule to bring its particle board manufacturing facility at Chowchilla, California into compliance as expeditiously as practicable with Madera County Air Pollution Control District regulation IV, rules 404, 405, and 406, a part of the federally-approved California State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and re-

porting requirements. If the conditions of the Order are met, it will permit Sequoiaboard, Wickes Forest Industries Division of the Wickes Corporation to delay compliance with the SIP regulations covered by the Order until March 15, 1979. The company is unable to immediately comply with these regulations.

EPA has determined that the Order shall be effective March 20, 1979, because of the need to immediately place Sequoiaboard, Wickes Forest Industries Division of the Wickes Corporation on a schedule for compliance with the applicable requirements of the California State Implementation Plan. (42 U.S.C. 7413(d), 7601.)

Dated: March 14, 1979.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.90 Federal delayed compliance orders issued under Section 113(d) (1), (3), and (4) of the Act, by adding the following entry:

Source	Location	Order No.	SIP regulation involved	Date of FR proposal	Final compliance date
Sequoiaboard, Wickes Forest Industries Div. Wickes Corp.	Chowchilla, California.	Sept. 23, 1977	Madera Co. APCD, Reg. IV, Rules 404, 405, 406.	July 26, 1978.	Mar. 15, 1979.

2. The text of the Order is as follows:

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX

In the Matter of Sequoiaboard, Wickes Forest Industries, Division of the Wickes Corporation, Chowchilla, California, Proceeding under § 113(d)(1) of the Clean Air Act, as Amended, Docket No. 9-77-23.

ORDER

The following Order is issued this date pursuant to Section 113(d)(1) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. (hereinafter referred to as the "Act"). This Order contains a schedule for compliance, interim requirements, and monitoring and reporting requirements. Public notice, opportunity for a public hearing, and thirty days notice to the State of California has been provided pursuant to Section 113(d)(1) of the Act.

FINDINGS

On September 22, 1977, the Director Enforcement Division, EPA, Region IX, pursuant to authority delegated by the Administrator and redelegated by the Regional Ad-

ministrator, found that the Sequoiaboard plant located in Chowchilla, California was in violation of Madera County Air Pollution Control District Regulation IV, Rules 404, 405, and 406 dealing with the control of particulate matter emissions, in that source tests performed on Sequoiaboard's dry rotary drier showed the particulate matter emissions to be in excess of the allowable limitations.

On November 22, 1977, the Director, Enforcement Division, EPA, Region IX, pursuant to authority delegated by the Administrator and redelegated by the Regional Administrator, found that the Sequoiaboard plant located in Chowchilla, California was in violation of Madera County Air Pollution Control District Regulation IV, Rules 405 and 406 dealing with the control of particulate matter emissions, in that source tests performed on Sequoiaboard's wet rotary drier showed the particulate matter emissions to be in excess of the allowable limitations.

The violations described in the Director's notifications of September 22, and November 22, 1977, have continued beyond the 30th day after the date of the Enforcement Division Director's notification.

After a thorough investigation of all rele-

vant facts, including the seriousness of said violations, it has been determined that compliance in accordance with the schedule hereinafter set forth is as expeditious as practicable.

ORDERED

I. That Sequoiaboard shall complete the following acts with respect to its wet and dry rotary driers for the control of particulate matter emissions on or before the dates specified:

A. April 30, 1978—Award contracts or issue purchase orders for emission control equipment.

B. August 31, 1978—Initiate on-site construction and/or installation of emission control equipment.

C. March 1, 1979—Complete installation of emission control equipment.

D. March 15, 1979—Complete shutdown operations and achieve final compliance with Madera County Air Pollution Control District Regulation IV, Rules 404, 405, and 406 at the dry rotary drier and Rules 405 and 406 at the wet rotary drier.

II. That Sequoiaboard shall comply with the following interim requirements which are determined to be the best reasonable and practicable interim system of emission reduction (taking into account the requirements for which compliance is ordered in Section I above), and are necessary to avoid an imminent and substantial endangerment to the health of persons and to assure compliance with Madera County Air Pollution Control District Regulation IV, Rules 404, 405, and 406 insofar as Sequoiaboard is able to comply during the period this Order is in effect:

A. Particulate matter emissions from the wet rotary drier shall not exceed 18.2 lbs/hr or 0.1 gr/DSCF.

B. Particulate matter emissions from the dry rotary drier shall not exceed 36.8 lbs/hr or 0.158 gr/DSCF.

III. That Sequoiaboard is not relieved by this Order from compliance with any requirements imposed by the applicable State Implementation Plan, EPA, and/or the courts pursuant to section 303 during any period of imminent and substantial endangerment to the health of persons.

IV. That Sequoiaboard shall comply with the following emission monitoring and reporting requirements on or before the dates specified below:

A. March 15, 1979—conduct particulate matter performance tests on the wet and dry rotary driers in accordance with Appendix A, 40 CFR Part 60, Methods 1 through 5.

B. March 30, 1979—submit test results to demonstrate compliance with Regulation IV, Rules 404, 405 and 406 of the Madera County Air Pollution Control District which have been approved as part of the State Implementation Plan (SIP). These performance test results must contain at least the information listed in Attachment I of this Order.

C. Sixty (60) days prior to conducting the tests required by Section IV.A above—submit a Source Test Plan for the wet and dry rotary driers which includes the information specified in Attachment II of this Order to the Director, Enforcement Division, EPA, Region IX.

D. Thirty (30) days prior to conducting the tests specified in Section IV.A above—notify the Director, Enforcement Division, EPA, Region IX of the scheduled test date(s).

E. No later than five days following the date for completion of each increment of progress required by Section I, above—certify in writing to the Director, Enforcement Division, EPA, Regions IX whether such increment has been met.

V. Nothing herein shall affect the responsibility of Sequoiaboard to comply with State of local regulations, other than those specified in this Order.

VI. Sequoiaboard is hereby notified that your failure to achieve compliance by July 1, 1979, may result in a requirement to pay a noncompliance penalty under Section 120. In the event of such failure, Sequoiaboard will be formally notified, pursuant to Section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

VII. This Order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator determines on the record, after notice and hearing, that an inability to comply with Regulation IV, Rules 404, 405, and 406 of the Madera County Air Pollution Control District no longer exists.

VIII. Violation of any requirements of this Order may result in one or more of the following actions:

A. Enforcement of such requirement pursuant to Sections 113(a), (b) or (c) of the Act, including possible judicial action for an injunction and/or penalties and in appropriate cases, criminal prosecution.

B. Revocation of this Order, after notice and opportunity for a public hearing, and subsequent enforcement of Regulation IV, Rules 404, 405, and 406 of the Madera County Air Pollution Control District in accordance with the preceding paragraph.

C. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to Section 120 of the Act.

IX. This Order is effective March 20, 1979.
Dated: March 14, 1979.

DOUGLAS M. COSTLE,
Administrator, U.S. Environmental
Protection Agency.

The Wickes Corporation acknowledges that Sequoiaboard of the Wickes Forest Industries Division is in violation of Madera County Air Pollution Control District Regulation IV, Rules 404, 405, and 406. Furthermore, the Company has reviewed this Order, believes it to be a reasonable means to attain compliance with Madera County Air Pollution Control District Regulation IV, Rules 404, 405, and 406 and consents to the terms of the Order.

Dated: February 1, 1979.

ARTHUR C. HALL,
General Manager,
Wickes Forest Industries.

DELAYED COMPLIANCE ORDER

ATTACHMENT I

U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION IX, SURVEILLANCE AND ANALYSIS
DIVISION

SOURCE TEST REPORT FORMAT

The Source Test Report should contain all data relevant to the tests which were

conducted. A description of the process being tested, the operating conditions under which the tests were conducted, the test procedures used, and the results of the tests should all be included in the report. The following information should be provided:

I. INTRODUCTION

- Plant name, address, and location,
- Dates of testing,
- Name and address of the testing organization and the name of test team supervisor,
- Purpose of the test,
- Pollutants measured,
- Names of observers.

II. SUMMARY

- Emission results,
- Applicable regulations showing allowable emissions,
- Process data as related to the determination of compliance,
- Description of pollutants measured and samples collected,
- Visible emissions summary during tests,
- Deviations from standard source test procedures or normal operating conditions.

III. PROCESS DESCRIPTION

- Description of process including emission control equipment,
- Maximum rated operating capacity of the process,
- Flow diagram of the process,
- Type and quantity of raw materials and finished products processed during the tests,
- Process data monitored during the tests,
- Actual percent of maximum operating capacity of the process during the tests.

IV. SAMPLING PROCEDURE

- Description of the sampling train and the field procedures used,
- Description of sample recovery and analytical procedures used,
- Sketch indicating sampling port locations relative to the process, the control equipment, and any upstream or downstream flow disturbances,
- Sketch of cross section of stack showing traverse point locations,
- Description of the quality assurance procedures followed by the laboratory for the analytical procedures,
- Description of chain of custody procedures followed to insure the integrity of the samples.

V. TEST RESULTS

- Tabulations of results showing a comparison between actual emission rates and allowable emission rates,
- Discussion of significance of results relative to operating parameters and emission regulations,
- Discussion of significance of divergences from normal sampling procedures or normal operating conditions which could have an effect on test results. Where divergences occurred, calculate the positive or negative bias in the results.

VI. CALCULATIONS AND DATA REDUCTIONS METHODS

- Description of computational methods used including equations used to obtain final emission results from field data.

APPENDIX

- Copies of all field data collected during the tests including sample data sheets and process operation logs,
- Copies of all analytical laboratory data sheets,
- Copies of calculation sheets,
- Copies of sampling equipment and calibration data sheets,
- Names and titles of personnel and organizations participating in the tests,
- Visible emission observation sheets for observations performed during the tests.

DELAYED COMPLIANCE ORDER

ATTACHMENT II

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION IX

SURVEILLANCE AND ANALYSIS DIVISION

SOURCE TEST PLAN

The information specified below must be submitted to the Region IX Office of EPA at least 30 days prior to the scheduled test date. This information is required in order to insure that proper test methods and procedures are utilized. The Region IX Office will review the test plan, and in the event of any deficiencies or comments concerning the plan, will contact the company to arrange a meeting to discuss the test procedures. Submittal of this information will minimize the possibility of a test being rejected as a result of improper sampling or data collection procedures.

All testing shall be performed in strict accordance with the specified procedures.

A satisfactory test shall consist of three runs. Any variations in the sampling or analytical procedures must receive approval from this office prior to testing. Appropriate chain of custody procedures must be followed during the sampling and analysis.

The following information should be included in the source test plan.

- Source Information:
Name, address, and location of the facility being tested.
Responsible persons at the facility, and telephone number.
- Testing Firm Information:
A. Name and address of the firm conducting the testing.
B. Responsible person at the testing firm, and telephone number.
- Sampling Equipment:
A. A description of the emission sampling equipment including a schematic diagram of the sampling train.
- Procedures:
A. Types of pollutants to be sampled.
B. A description of the sampling analysis procedures.
- Documentation for any proposed variations from the specified procedures.
- Emission Point Information:
A. A sketch with dimensions indicating the flow of exhaust gases from the process through the control equipment and associated duct work to the stack.
B. A diagram of the stack showing the dimensions and the configuration of the sampling, and the distances to the nearest upstream and downstream flow interferences.
C. A cross-sectional sketch of the stack at the sampling location, showing the locations of the sampling traverse points.

D. Estimated flue gas conditions at the sampling location, including temperature, moisture content, and velocity.

6. Process Equipment:

A. A description of the process operation, including a process flow sheet.

B. Type and quantity of raw materials, catalysts, and products being used or produced in the process.

C. Maximum rated capacity of the process.

D. Actual maximum operating capacity of the process.

E. Operating capacity during the previous six months period.

F. Process data to be monitored to insure representative operation during the test.

G. Normal process operating schedule during a 24-hour operating period.

H. Normal maintenance schedule for this process.

I. Type of feed stock or fuel that causes the greatest individual emissions, and the percent of annual production for which these materials are used.

7. Control Equipment:

A. Description of emission control system, including the types of control equipment, manufacturer of control equipment, the rated capacity and efficiency of the control equipment.

B. Data to be monitored and recorded, to insure representative operation of the control equipment during testing.

C. Minimum acceptable values of all control device parameters, such as flow rates, pressure drops, temperature, and voltage of electrical input.

D. Description of any conditioning of gases prior to control device.

E. Normal maintenance schedule on control equipment for the previous year.

8. Data Sheets:

A. Copies of field data sheets to be used during the test.

9. Chain of Custody:

A. A description of the procedures that will be followed to maintain the integrity of the samples collected.

B. Copies of chain of custody seals and data sheets.

10. Quality Control:

(The following items should be available to the source test observer prior to the start of the test.)

A. Calibration sheets for the dry gas meter, pitot tube, nozzle, and other equipment that requires calibration.

B. Quality assurance control charts for the analytical procedures to be used in the analysis of the test samples.

C. A list of preweighed filters to be used during particulate emission testing.

[FR Doc. 79-8263 Filed 3-19-79; 8:45 am]

[6560-01-M]

[FRL 1061-81]

PART 86-CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES CERTIFICATION AND TEST PROCEDURES

Technical Amendments; Corrections

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action is a publication of several technical amendments to Subpart D of the motor vehicle certification regulations. The amendments make minor, non-substantive changes to the regulations. The amendments are described in the table below.

DATES: These amendments are effective April 19, 1979.

FOR FURTHER INFORMATION CONTACT:

William B. Clemmens, Standards Development and Support Branch, Emission Control Technology Division, Mobile Source Air Pollution Control, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Phone: (313) 668-4337.

SUPPLEMENTARY INFORMATION: By issuing the following technical and

clerical amendments directly as a final rule, EPA is foregoing the prior issuance of a notice of proposed rulemaking (NPRM) and the opportunity for public comment on the proposal provided by the NPRM. The issuance of a proposal and opportunity for public comment is unnecessary and is contrary to the public interest. The amendments primarily clarify the regulations and impose no additional burden on the regulated industry in complying with the regulations. For these reasons, EPA finds good cause to dispense with public comment in accordance with 5 U.S.C. § 553(b).

NOTE: The EPA has determined that this document is not a "significant" regulation and does not require preparation of a Regulatory Analysis under Executive Order 12044 or the preparation of an Economic Impact Assessment under Section 317 of the Clean Air Act as amended.

Dated: March 14, 1979.

DOUGLAS M. COSTLE,
Administrator.

Section	Change	Reason
1. 86.315-79(b).....	Relaxes the precision specification for very low analyzer ranges.	The relaxed specifications on the lower ranges provides more flexibility in performing the test sequence.
2. 86.327-79(c)(4).....	Adds the words "of full scale" to the analyzer specifications.	Clarification.
3. 86.335-79(d).....	Increases the time allowed to stabilize the engine power output between test modes.	Automatic dynamometer controllers are permitted to operate the engine during the test cycle. Some controllers cannot stabilize the engine power output within the specified 20 seconds.
4. 86.338-79:		
(a)(1).....	Increases the full scale value of the lowest range required.	Some laboratories may wish to use HC scales labeled as ppm propane (ppm C ₃) instead of ppm C. The change makes this option more convenient.
(a)(6).....	Allows the emission analyzers to be operated under certain conditions below the specified minimum chart deflection.	Engines with extremely low average HC emissions during the idle and CT modes may tend to have transient HC emissions (spikes) exceeding 200 percent of full scale (i.e., off-scale) of the required range for the average emissions. It is important that these transient emissions be on-scale so that they can be measured accurately. Yet, it is difficult to predict with any reasonable degree of certainty whether the engine will exhibit these transient emissions since they are generally a function of the prevailing ambient conditions. This change will allow more flexibility in dealing with the problem of maintaining on-scale readings.
5. 86.340-79(c)(4).....	Allows additional time during the test sequence in order to calibrate an automatic dynamometer controller.	As the ambient conditions change the power levels of the engine change. Because the power levels required for each mode of the test cycle are a percentage of the maximum power under the prevailing ambient conditions, the absolute power level for each mode may change from test to test. For those who wish to use an automatic dynamometer controller, additional time during the test sequence is necessary to reset the controller to the new power levels.
6. 86.342-79(e)(2).....	Relaxes the analyzer drift specifications for very low analyzer ranges.	The new specification allows slightly more flexibility on the lowest analyzer ranges.

40 CFR Part 86 is amended as follows:

1. Section 86.315-79(b) is revised to read as follows:

§ 86.315-79 General analyzer specifications.

(b) *Precision.* The precision of the analyzer must be no greater than ± 1 percent of full-scale concentration for each range used above 155 ppm (or ppm C), or ± 2 percent for each range used below 155 ppm (or ppm C). The precision is defined as 2.5 times the standard deviation(s) of 10 repetitive responses to a given calibration or span gas.

2. Section 86.327-79(c)(4) is revised to read as follows:

§ 86.327-79 Quench checks; NOx analyzer.

(c) ***

(4) Prior to testing, the difference between the calculated NOx response and the response of NOx in the presence of CO₂ (step 2) must not be greater than 3.0 percent of full-scale. The calculated NOx response is based on the calibration performed in step (1).

3. Section 86.335-79(d) is revised to read as follows:

§ 86.335-79 Gasoline-fueled engine test cycle.

(d) Torque for each mode must be held at the specified value ± 2 percent of the maximum torque observed except for the first 35 seconds of each mode. For example, mode 3 torque shall be held between 53 and 57 percent of maximum torque ($55 \pm 2\%$).

4. In § 86.338-79, paragraph (a)(1) is revised and a new paragraph (a)(6) is added as follows:

§ 86.338-79 Exhaust measurement accuracy.

(a) ***

(1) The analyzer's response may be less than 15 percent of full-scale if the full-scale value is 155 ppm (or ppm C) or less.

(6) The HC analyzer's response may be less than 15 percent of full-scale on the idle and CT modes when transient emissions (spikes) can be reasonably expected to exceed 90 percent of full-scale. Higher analyzer ranges may be used provided that the precision and linearity of the analyzer at the level of the readings below 15 percent meets

the specifications of the range that would be required if the transient emissions did not exist.

(5) Section 86.340-79(c)(4) is revised to read as follows:

§ 86.340-79 Gasoline-fueled engine dynamometer test run.

(c) ***

(4) Determine the analyzer ranges required for each mode specified in § 86.335 to meet the range specifications of § 86.338. Prior to determining the range selection, the automatic dynamometer controller, if used, may be calibrated for the prevailing ambient conditions. The engine must not be operated for more than 20 minutes. Cycle 1, or cycles 1 and 2, specified in § 86.335, may be used for this purpose;

6. Section 86.342(e)(2) is revised to read as follows:

§ 86.342-79 Post-test procedures.

(e) ***

(2) The zero response drift must not exceed 2.0 percent of full-scale chart deflection for each range used above 155 ppm (or ppm C), or 3 percent of full-scale chart deflection for each range below 155 ppm (or ppm C).

AUTHORITY: Sec. 206, 301(a) of the Clean Air Act as amended (42 U.S.C. 7525, 7601(a))
[FR Doc. 79-8262 Filed 3-19-79; 8:45 am]

[6820-25-M]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER F—ADP AND TELECOMMUNICATIONS

[FPMR Amdt. F-37]

PART 101-36—ADP MANAGEMENT

Subpart 101-36.48—Exhibits

ADP SHARING EXCHANGE ADDRESSES

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation updates the ADP sharing exchange addresses and the map showing the GSA regions and locations of ADP sharing ex-

changes. Current sharing exchange addresses and locations are necessary since they are designed to provide maximum assistance to Federal agencies in obtaining ADPE time, software, and personal services from existing Government resources.

EFFECTIVE DATE: March 20, 1979.

FOR FURTHER INFORMATION CONTACT:

L. Perlman, Procurement Policy and Regulations Branch, Policy and Evaluation Division, Office of Policy and Planning (202-566-0834).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

1. Section 101-36.4801 is revised to read as follows:

§ 101-36.4801 ADP sharing exchange addresses.

GSA Region 1, ADP Sharing Exchange, Boston, MA: General Services Administration (1CP), John W. McCormack Post Office and Courthouse, Room 817, Boston, MA 02109. Telephone: Commercial, 617-223-6277; FTS, 223-6277.

GSA Region 2, ADP Sharing Exchange, New York, NY: General Services Administration (2CP), 26 Federal Plaza, New York, NY 10007. Telephone: Commercial, 212-264-3631; FTS, 264-3631.

GSA Region 3, ADP Sharing Exchange, Washington, DC: General Services Administration (3CP), 7th and D Streets, SW., Washington, DC 20407. Telephone: Commercial, 202-472-1638; FTS, 472-1638.

Philadelphia ADP Sharing Exchange, General Services Administration (3CTON), William J. Green, Jr., Federal Building, 600 Arch Street, Room 9400, Philadelphia, PA 19106. Telephone: Commercial, 215-597-7918; FTS, 597-7918.

Tidewater ADP Sharing Exchange, Headquarters 5th Naval District, Norfolk, VA 23511. Telephone: Commercial, 804-444-7571; FTS, 954-7571; Autovon, 690-7571.

GSA Region 4, ADP Sharing Exchange, Atlanta, GA: General Services Administration (4CP), 1776 Peachtree Street, NW., Atlanta, GA 30309. Telephone: Commercial, 404-881-3456; FTS, 257-3456; Autovon, 588-3591.

GSA Region 5, ADP Sharing Exchange, Chicago, IL: General Services Administration (5CP), 230 South Dearborn Street, Chicago, IL 60604. Telephone: Commercial, 312-886-3820; FTS, 886-3820.

GSA Region 6, ADP Sharing Exchange, Kansas City, MO: General

Services Administration (6CP), 1500 East Bannister Road, Kansas City, MO 64131. Telephone: Commercial, 816-926-7540; FTS, 926-7540; Autovon, 465-7540.

GSA Region 7, ADP Sharing Exchange, Fort Worth, TX: General Services Administration (7CP), 819 Taylor Street, Fort Worth, TX 76102. Telephone: Commercial, 817-334-3684; FTS, 334-3684.

GSA Region 8, ADP Sharing Exchange, Denver, CO: General Services Administration (8CP), Building 41, Denver Federal Center, Denver, CO 80225. Telephone: Commercial, 303-234-2466; FTS, 234-2466.

GSA Region 9, ADP Sharing Exchange, San Francisco, CA: General Services Administration (9CP), 525 Market Street, San Francisco, CA 94105. Telephone: Commercial, 415-556-7877; FTS, 556-7877.

Southern California ADP Sharing Exchange, General Services Administration (9CD-1), 880 Front Street, Room 4N22, San Diego, CA 92188. Telephone: Commercial, 714-293-5587; FTS, 895-5587.

Las Vegas ADP Sharing Exchange, Nevada Operations Office of Department of Energy (DOE), P.O. Box 14100, Las Vegas, NV 89114. Telephone: Commercial, 702-734-3121; FTS, 598-3121.

Hawaii ADP Sharing Exchange, General Services Administration (9CD-2), Federal Building, Box 50011, 300 Ala Moana Blvd., Honolulu, HI 96850. Telephone: Commercial, 808-546-8636; FTS, 546-8636.

GSA Region 10, ADP Sharing Exchange, Auburn, WA: General Services Administration (10CP), GSA Center, Auburn, WA 98002. Telephone: Commercial, 206-833-6500, ext. 281; FTS, 396-5281.

Oregon ADP Sharing Exchange, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208. Telephone: Commercial, 503-234-3361; FTS, 429-4481.

§ 101-36.4802 [Amended]

2. Section 101-36.4802 is amended to replace the words "14th Naval District" with "Honolulu" in the map of GSA regions.

NOTE.—The map illustration is filed as part of the original document and does not appear in the FEDERAL REGISTER.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

Dated: February 23, 1979.

JAY SOLOMON,
Administrator of
General Services.

[FR Doc. 79-8300 Filed 3-19-79; 8:45 am]

[6730-01-M]

Title 46—Shipping

CHAPTER IV—FEDERAL MARITIME COMMISSION

[Docket 78-57; General Order 41]

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

PART 544—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION OUTER CONTINENTAL SHELF

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is hereby issuing regulations affecting persons who own and operate vessels carrying oil from offshore facilities above the Outer Continental Shelf. The Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372) imposes upon such vessel owners and operators a new liability for damages and removal costs resulting from discharges of oil. Vessel operators are required to demonstrate that they are financially able to meet such potential liability, up to certain limits, before their vessels may lawfully engage in any segment of the transportation of oil from an offshore facility above the Outer Continental Shelf. These regulations set forth the manner by which financial responsibility can be demonstrated to the Commission in accordance with the new law, and provide for the issuance of Certificates of Financial Responsibility which must be carried aboard vessels and presented to officials of the U.S. Coast Guard, or its designees, upon request.

DATE: This rule is effective March 20, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Certification and Licensing, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, (202) 523-5840.

SUPPLEMENTARY INFORMATION: On January 3, 1979 (44 FR 915), the Commission proposed the issuance of regulations (a new Part 544 to Title 46 of the Code of Federal Regulations) to implement the vessel certification and financial responsibility provisions of the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA). Comments from the public were invited with respect to those proposed regulations.

Comments were received from (1) LeBoeuf, Lamb, Leiby & MacRae,

which serves as General Counsel in the United States for the Underwriters at Lloyd's (Lloyd's); (2) the American Institute of Marine Underwriters (AIMU), the member insurance companies of which are said to write over 90 percent of the marine insurance business written in the United States; (3) the American Institute of Merchant Shipping (AIMS), an association of 26 companies owning or operating United States flag oceangoing vessels; (4) the American Institute of Certified Public Accountants (AICPA); (5) the Offshore Operators Committee (Operators Committee), an organization of 70 companies engaged in oil and gas exploration and production in the Gulf of Mexico and Atlantic offshore areas; (6) Continental Oil Company, North American Production Operations (Continental Oil); and (7) Exxon Company, U.S.A. (Exxon).

Continental Oil asserted that the Commission has an obligation to avoid the "expensive and unnecessary duplication of coverage" which will be the result of the Commission maintaining three separate sets of regulations requiring evidence of financial responsibility for water pollution: 46 CFR 542 revised, implementing section 311(p)(1) of the Federal Water Pollution Control Act; 46 CFR 543, implementing section 204(c) of the Trans-Alaska Pipeline Authorization Act; and the instant regulations, 46 CFR 544, implementing section 305(a)(1) of the OCSLAA.

Because those three sets of regulations are mandated by three separate statutes, each with its own unrelated liabilities, defenses, conditions and exclusions, there are no areas of duplication other than those which have been eliminated in these final regulations.

SECTION 544.1—SCOPE

Comments concerning this section were submitted by AIMS, the Operators Committee, Continental Oil and Exxon. Generally, their comments are that the proposed language of that section, if taken alone, is too broad and could be misread as applying to all vessel operations involving the movement of any oil from offshore facilities, including fuel oil. More descriptive language, such as that used by the Commission in section 544.3(d) of the proposed regulations, i.e., "oil that has been produced by an offshore facility," is suggested.

In order to avoid a misunderstanding of the "Scope," we will adopt new language designed to make it clear that the regulations apply only to vessels carrying Outer Continental Shelf-produced oil which has not yet been brought ashore. Exxon, the Operators Committee and AIMS, however, would have the Commission further amend the scope of the regulations so as to

exclude even vessels which carry Outer Continental Shelf-produced oil (1) loaded as a result of containment and removal operations after an oil spill; (2) carried in small amounts on an occasional basis for purposes of laboratory analysis; (3) mixed with drilling mud and being transported on an occasional basis for proper disposal; and (4) loaded due to failure of a facility's pipeline system. (The last exclusion was suggested only by AIMS.)

As to the first of the above numbered suggestions, the Commission finds merit in further clarifying the "Scope" by specifically excluding from these financial responsibility regulations, vessels which carry Outer Continental Shelf-produced oil solely as a result of spill containment and removal operations. It was not our intent to make such vessels subject to these regulations because vessels engaged in cleanup activities do not fall within the OCSLAA's definition of vessel.¹ Moreover, as Exxon correctly points out, the number of vessels immediately available for cleanup work should not be limited to vessels which have obtained OCSLAA Certificates from the Commission.²

The second suggested amendment to the "Scope" is the exemption of vessels carrying Outer Continental Shelf-produced oil in small amounts for purposes of laboratory analysis. The "small" amounts suggested by Exxon and the Operators Committee are 110 gallons per container, with no more than two containers (220 gallons) suggested by the Operators Committee and without limit in the case of Exxon's comments. The fact that those comments are not supported by any reference to the statute or legislative history whereby the Commission would be authorized to provide such exemption is, we think, controlling. The Commission has already addressed a similar question involving "small" amounts of oil carried by vessels subject to the Federal Water Pollution Control Act. In that instance, the Commission determined that it had no authority to exempt the carriage of even one barrel of oil. The Commission likewise finds no statutory basis for the exemption under this Act.

The third suggested amendment to the "Scope" is the exemption of vessels carrying Outer Continental Shelf-produced oil mixed with drilling mud

being transported for proper disposal. Again, the comments failed to point out anything in the OCSLAA or legislative history which would authorize the Commission to provide such an exemption. To the contrary, one of the clear purposes of the law is to balance development of the Outer Continental Shelf with protection of the environment by assuring reimbursement to parties damaged by oil spills in connection with all activities on the Outer Continental Shelf. The pollution damages that could result from vessels carrying, in bulk, thousands of pounds of Outer Continental Shelf-produced oil mixed with drilling mud do not appear to be capable of exclusion from these regulations.

The fourth and last suggested amendment to the "Scope" is the exemption of vessels carrying Outer Continental Shelf-produced oil as the result of a failure of a pipeline system. Again, the Commission is without authority under the law to exempt such vessels from these regulations.

After considering the four above discussed comments, the Commission has decided to amend and clarify the proposed wording of § 544.1 by adopting the following language:

(a) These regulations (Part 544 of Title 46 of the Code of Federal Regulations) implement the vessel financial responsibility requirements of the Outer Continental Shelf Lands Act Amendments of 1978. These regulations apply to all vessels engaged in any segment of the transportation of oil produced from an offshore facility on the Outer Continental Shelf when such vessels are operating in the waters above submerged lands seaward from the coastline of a State or the waters above the Outer Continental Shelf.

(b) Vessels having on board Outer Continental Shelf-produced oil after that oil has been brought ashore, or loaded as a result of removal operations after an oil spill, do not thereby become subject to the regulations in this Part.

SECTION 544.2(d)—CARGO

Continental Oil asserts that the Commission's proposed definition of "cargo," i.e., "'cargo' means oil carried on board a vessel for purposes of transportation, in any quantity and under any conditions," should be amended to mean only Outer Continental Shelf-produced oil in order to comport with the OCSLAA.

First, no amendment is necessary because the word "cargo" is used only in the insurance, bond and guaranty Forms FMC-193 through 195, and then only in direct connection with the words "Outer Continental Shelf-produced oil."

Second, nothing in these regulations should be construed as meaning that only those pollution incidents involving Outer Continental Shelf-produced oil are covered by the herein required evidence of financial responsibility. We are unable to find anything in the OCSLAA or its legislative history that would exclude liability for economic loss resulting from, for example, spills of fuel or bunker oil, provided that the vessel causing the spill was subject to the OCSLAA. The carriage of Outer Continental Shelf-produced oil is merely one prerequisite to the possible applicability of these regulations as set forth in the "Scope." (See also, the discussion of § 544.2(n)—Oil.)

The definition of "cargo" in these final regulations will remain as proposed.

SECTION 544.2(h)—DAMAGES

The definition of "damages" in the proposed regulations reads, in pertinent part, as follows: "'Damages' means economic loss arising directly or indirectly from oil pollution, including . . . reasonable costs associated with preparation and presentation of natural resource damage claims." (Emphasis added.)

Lloyd's AIMS and Continental Oil take exception to the Commission's use of the word "indirectly," as underlined above, alleging that it could be construed as having a broader meaning than the actual wording used in the OCSLAA: "... economic loss, arising out of or directly resulting from oil pollution . . ." (Emphasis added.) It is possible that the proposed words "directly or indirectly" could be held to have a broader meaning than the words in the statute—"arising out of or directly." The wording of the statute will be used in the final definition.

Lloyd's also takes exception to the other above underlined wording in the proposed definition concerning certain "preparation and presentation" costs. While Lloyd's is correct in pointing out that such wording is not included in section 303(a) of the OCSLAA, we inserted that wording in the proposed definition because of the clear legislative history underlying section 303(a) of the statute:

"In addition, it is intended that reasonable costs associated with the preparation and presentation of natural resource damage claims are intended to be recoverable as part of each claim." (Conference Report No. 95-1091, accompanying S. 9, at page 131.)

Accordingly, the contested "preparation and presentation" wording will remain a part of the definition of "damages" in the final regulations.

Finally with respect to the Commission's proposed definition of "damages," Continental Oil asserts that the definition must be amended to include

¹The key phrase in the OCSLAA's definition of "vessel" found in section 301(5) is "... and which is transporting oil directly from an offshore facility." (Emphasis added.)

²It also should be noted that vessels used in cleanup work, if they exceed 300 gross tons, already would be in possession of Certificates issued by the Commission under the Federal Water Pollution Control Act requirements; 46 CFR 542 revised.

certain issues involving contributory negligence of the claimant, damages resulting from willful actions of a claimant, claimant's responsibilities to mitigate damages, claims for loss of oil and gas reserves still in the ground, and claims for loss of tax revenue. We see no basis for enlarging the definition beyond that clearly set forth in the statute and the legislative history.

SECTION 544.2(l)—INSURER

Lloyd's suggests that the proposed definition of "insurer" be expanded to specifically state that "domestic, foreign and alien" insurance companies, rather than just "insurance companies," could be found acceptable to the Commission; and that the words "associations of insurers" be expanded to read "associations of individual insurers."

The proposed definition is almost a verbatim rendition of the Commission's definition of "insurer" in existing Parts 542 revised (FWPCA) and 543 (TAPAA) of this title (the inconsequential difference of one word is not pertinent to Lloyd's comment). Moreover, as in the case of Parts 542 revised and 543, the proposed definition in fact includes "domestic, foreign and alien" insurers, as well as associations of "individual" insurers. No change, therefore, will be adopted at this time.

SECTION 544.2(n)—OIL

The proposed definition of "oil" reads as follows: "'Oil' means petroleum, including crude oil or any fraction or residue therefrom, whether or not carried on board a vessel." Continental Oil objects to that definition because it is not limited to Outer Continental Shelf-produced oil, and states that the definition must be so limited in order to fulfill the intent of the OCSLAA.

As discussed above in connection with the definition of "cargo," we disagree with Continental Oil's assertion. The OCSLAA and its legislative history point to the intention of Congress to include oil spills involving more than just Outer Continental Shelf-produced oil (e.g., bunker oil), provided, of course, that, in the case of a vessel, the vessel was carrying Outer Continental Shelf-produced oil and was operating in a manner which made it subject to the "Scope" of these regulations, i.e., the scope of Title III of the OCSLAA.

It would have been stated or implied somewhere in the statute or legislative history that economic loss resulting only from spills of Outer Continental Shelf-produced oil was covered by the OCSLAA, if that were the case. Instead, Congress chose to use obviously broad definitions of "oil" and "oil pollution" in the statute and, in section 101(12) of the statute, found that

"funds must be made available to pay for the prompt removal of any oil spilled or discharged as a result of activities on the Outer Continental Shelf. . . ." (Emphasis added). Similarly, in section 102(8) of the statute, entitled "Purposes," Congress used the words "any oil spilled." It did not limit it just to Outer Continental Shelf-produced oil.

In section 301(22) of the OCSLAA, removal costs are defined to include, among other costs, costs incurred under subsections (c), (d) or (l) of section 311 of the Federal Water Pollution Control Act. That Act, without question, concerns costs resulting from spills of any and all types of oil including, of course, bunker and other fuel oils. In short, we come to the inescapable conclusion that "oil" as defined in the OCSLAA and, therefore, in these regulations cannot be limited to Outer Continental Shelf-produced oil. No change to the proposed definition will be made.

SECTION 544.2(o)—OIL POLLUTION

The definition of "oil pollution" in the proposed regulations begins as follows: "'Oil pollution' means: (i) the presence of oil, either in an unlawful quantity or which has been discharged at an unlawful rate." Continental Oil, although recognizing that the phrase was taken directly from the OCSLAA's definition of "oil pollution," requests the Commission to define the words "unlawful quantity" and "unlawful rate."

The Commission believes that the words in question refer primarily to section 311(b)(3) of the Federal Water Pollution Control Act which makes provision for the determination of the amounts of oil which, when discharged into the navigable waters of the United States or the Contiguous Zone, among other waters, would be considered unlawful. This does not come within the authority delegated to this Commission. Rather, it comes within the jurisdiction of the Environmental Protection Agency and is addressed in its regulations in Part 110 of Title 40 of the Code of Federal Regulations.

SECTION 544.2(s)—PERSON

The Commission's definition of "person" includes a "joint venture," as does the statutory definition. The word "person" is used in these regulations and in the statute in connection with, among other things, the definitions of vessel owner and operator. A vessel owner or operator, therefore, can be a joint venture.

Continental Oil suggests that a vessel owner which is a joint venture be allowed to demonstrate financial responsibility in proportion to each party's respective ownership of a vessel. We must reject that suggestion

because, first, it would be impractical as the parties to the joint ventures are jointly and severally liable for the obligations of the venture, notwithstanding the financial responsibility requirement. Second, the same end can be reached by the vessel owner parties to a joint venture under the proposed regulations. Third, we do not believe that adoption of the suggestion would be in accord with the intent of the OCSLAA.

SECTION 544.2(y)—VESSEL

Exxon and AIMS suggest that the proposed definition of "vessel" be amended to make it clear that a vessel is not a "vessel" within the meaning of the regulations unless, in addition to other criteria, it is carrying Outer Continental Shelf-produced oil.

As noted above in connection with the clarification we adopted involving the "Scope" of the regulations, we do not wish to make these regulations appear broader in scope than the underlying statute.³ Accordingly, the words "Outer Continental Shelf-produced" will appear between the words "of" and "oil" in the final definition of "vessel."

SECTION 544.3—GENERAL

Continental Oil suggests that paragraph (a) of the section should restate the exceptions and defenses to liability which section 304 of the OCSLAA provides to vessel owners and operators and that the "third party" defense should be discussed.

We see no justification in restating in the regulations what the OCSLAA states, unless vital to an understanding of the regulations. That is not the case here. Nor do we wish to add a lengthy section to these regulations without good cause. No change, therefore, will be made to § 544.3(a).

SECTION 544.5—TIME TO APPLY

Lloyd's, the Operators Committee, Continental Oil and Exxon are concerned that vessel operators, through no fault of their own, will not have time to file applications, fees and evidence of financial responsibility in time for the Commission to process the paperwork and issue Certificates by March 17, 1979; the date set forth in the proposed regulations.

The Commission is aware that time constraints did not permit issuance of

³In the Joint Explanatory Statement of the Committee on Conference (Conference Report No. 95-1091, accompanying S. 9, at page 128) the following is noted: The Senate bill includes within the scope of the oil spill title, a "vessel" transporting OCS oil, whether in the waters above the OCS or in the navigable waters. The House amendment is limited to the waters above the OCS. The conference report provides for the scope to be for vessels operating in all "offshore waters," that is in the waters above the OCS and above the submerged lands."

these regulations in sufficient time to allow for full compliance by the effective date of March 17, 1979. However, the clock with respect to liability cannot be stayed. Nevertheless, the Commission and its staff will endeavor administratively to assist vessel operators, if any, who will be transporting Outer Continental Shelf-produced oil on or immediately after the March 17, 1979 effective date.

The staffs of this Commission and the Coast Guard have devised a procedure to satisfy the statute and avoid the latter's enforcement of section 305(a)(2) of the OCSLAA (i.e., denial of entry into the navigable waters of the United States and detention) in emergency cases where vessel operators are not in possession of Certificates, through no fault of their own, on March 17, 1979. Specifically, if in such cases the vessel operators have at least submitted acceptable evidence of financial responsibility to the Commission in accordance with Part 544, the Commission's Office of Water Pollution Responsibility and the Coast Guard can expand the existing joint enforcement program, which concerns two other oil pollution laws, to encompass the OCSLAA as well. By that means, the Office of Water Pollution Responsibility is able to respond immediately to telephonic enforcement inquiries from Coast Guard field officials and confirm that a particular vessel is at least covered by evidence of financial responsibility, thus avoiding enforcement action by the Coast Guard due to the fact that a Certificate is not on board.

The joint Coast Guard/Commission telephonic enforcement program is in effect 7 days per week, 8:30 a.m. to 5:00 p.m., except national holidays. Therefore, vessel operators who expect to load Outer Continental Shelf-produced oil and who otherwise will be subject to these regulations should immediately arrange for their underwriters to submit evidence of financial responsibility to the Commission. Application forms and the required amount of fees may be submitted as soon as possible thereafter so that Certificates can be issued.

There are a number of vessel operators who currently are covered by self-insurance for purposes of Part 542 revised of this Title 46, CFR, but who, in their previous submissions, have failed to demonstrate sufficient working capital and net worth to cover the added amounts of working capital and net worth required by these Part 544 regulations. In those cases, if the vessel operators will be subject to Part 544, revised statements of net worth and working capital should be submitted immediately by the appropriate financial officers of the companies. In cases where such self-insurers report on a

consolidated financial basis, and thus are required to have an independent Certified Public Accountant audit the schedules of working capital and net worth, we will temporarily waive that requirement. Such schedules, therefore, will be accepted from the appropriate financial officers of the companies, without audit by an independent Certified Public Accountant. Those unaudited schedules must be replaced by audited schedules at the time the next annual financial statements fall due, i.e., 120 days after the close of the self-insurer's fiscal year. We will allow guarantors the same latitude in order not to discriminate against vessel operators who will be subject to Part 544 on March 17, 1979, and who are now covered by guaranties under Part 542 revised.

Rather than amend the "Time To Apply" section of the regulations, the Commission's staff is hereby directed to compensate for the statutory time constraints imposed upon applicants by means of expanding the existing joint enforcement program with the Coast Guard to encompass these OCSLAA requirements as well. To better reflect this decision, however, the Commission will amend a related provision of the regulations (paragraph (d) of § 544.3—General) by deleting the phrase "Before March 17, 1979," and changing the words "shall have submitted" to "shall submit as soon as possible."

Moreover, for the above mentioned reasons, we find good cause to make these regulations effective March 20, 1979 rather than after the usual 30-day period.

SECTION 544.6—APPLICATIONS, GENERAL INSTRUCTIONS

Paragraph (b) of this section provides that only vessel operators may apply for Certificates. Continental Oil comments that, "Because of the duplicate liability of the 'owner or operator,' this should be amended to protect the owner if the owner and operator are not the same." Unfortunately Continental Oil provided no explanation to its comments. Therefore, we are not able to discern any reason for changing paragraph (b).

Paragraph (c) of this section provides that the application form shall be signed by an authorized official of the applicant, whose title shall be shown in the space provided on the application. Otherwise, a written statement proving authority to sign shall be required. Continental Oil recommends that "a general corporate policy statement should be adequate to prove authority in the person who signs the application." If the "general corporate policy statement" so authorizes a corporate official, then the regulations are broad enough to accommo-

date this comment. Therefore, no change will be made.

Paragraph (d) of this section provides that if, prior to the issuance of a Certificate, the applicant becomes aware of a change in any of the facts contained in the application or supporting documentation, the applicant shall notify the Commission in writing within 5 days of becoming aware of the change. Continental Oil suggests that 5 days be changed to 15 days.

The reason for paragraph (d) is to encourage applicants to correct, promptly, any misstatements on the application so that the Commission will not issue an incorrect certificate. Incorrect Certificates result in the necessity for applicants to pay \$20 recertification fees and may lead to detention of the involved vessels. Accordingly, we see no justification for the suggested change.

SECTION 544.7—RENEWAL OF CERTIFICATES

This section requires certificants to apply for a new Certificate at least 21 days, but no earlier than 90 days, prior to the expiration date of the existing Certificate. Such applications are required to be made in writing, but not by submitting a new application Form FMC-192, unless the Certificant for some reason wishes to submit a new form rather than a letter. Continental Oil asserts that 21 days may not be sufficient and suggests that an expired Certificate and a copy of the renewal application "should be adequate to protect the owner or operator while awaiting such renewal Certificate."

We are of the opinion that the time period provided, i.e., 21 to 90 days, is more than sufficient time to obtain a renewal Certificate from the Commission. Moreover, we would have great difficulty in requesting the Coast Guard to accept an expired Certificate just because it was accompanied by what purports to be a copy of a renewal application. The Commission and the various enforcement agencies (in this case, the Coast Guard) have or can quickly enter into flexible arrangements whereby vessel operators need never fear *unjustified* vessel detentions under any of the Commission's vessel certification regulations. No change will be made to § 544.7.

SECTION 544.8(b)(3)—SELF INSURANCE

The AICPA, Exxon and Continental Oil submitted comments with respect to proposed section 544.8(b)(3)(i).

All of the AICPA's comments are concerned with technical clarification of § 544.8(b)(3)(i) and will be adopted by the Commission in the final regulations. For example, "statement of income" will be expanded to read "statement of income, retained earnings and changes in financial posi-

tion," which description is technically more correct. Similarly, "certified by an independent Certified Public Accountant" will be changed to read "audited by an independent Certified Public Accountant."

The comments made by Exxon and Continental Oil with respect to § 544.8(b)(3)(i) are concerned with the substance of that section, except for Exxon's suggestion that the term "balance sheet" be changed to "statement of financial position" in order to avoid confusion over terminology.⁴

Both Exxon and Continental Oil take exception to the provision in § 544.8(b)(3)(i) which requires that, in the case of a corporate self-insurer, only the Treasurer may certify to the accuracy of certain "additional" financial information. The same provision appears in § 544.8(b)(3)(ii).

The assertion is made that other appropriate officials of a corporation should be allowed to so certify. We agree with that position and will change the relevant portion of §§ 544.8(b)(3)(i) and 544.8(b)(3)(ii) to read "Treasurer (or equivalent official)." That change will make § 544.8(b)(3)(i) coincide with its counterpart provision in Part 542 revised of Title 46, CFR.

The change does not apply to cases where self-insurers submit consolidated financial statements. In such cases, § 544.8(b)(3)(i) requires that the supplemental financial information be audited by an independent Certified Public Accountant. Exxon would have the Commission delete that requirement and allow an appropriate official of the self-insurer to submit the information without an audit by an independent Certified Public Accountant.

The Commission rejects Exxon's suggestion as being contrary to the long-held policy of not accepting annual financial data from self-insurers unless the data has been audited by an independent Certified Public Accountant. While we will accept certain financial data from, for example, a corporate Treasurer or equivalent official, such data is always based upon financial statements of a single company audited by an independent Certified Public Accountant. In the case of consolidated financial statements, the Certified Public Accountant does not break out and audit the financial position of the self-insuring company alone. Therefore, except for the temporary period discussed above under "Time to Apply," we will continue to require audit by an independent Certified Public Accountant in connection with the supplemental financial data

⁴The chance that confusion would result from use of the term "balance sheet" seems remote. In any case, the changes in terminology made as a result of comments submitted by AICPA should avoid any such confusion.

accompanying consolidated statements.

Continental Oil asserts that § 544.8(b)(3)(ii) could present a problem for "smaller" companies. That section requires the submission of a semi-annual affidavit from a self-insurer whose net worth is not at least ten times the amount required to qualify as a self-insurer. The affidavit must state only that working capital and net worth have not fallen below the amount required to qualify as a self-insurer.

Since the same requirement appears in Part 542 revised of Title 46, CFR, and Continental Oil did not explain the nature of the problem it referred to, we will not eliminate the requirement.

Exxon and Continental Oil take exception to the time limits in § 544.8(b)(3)(iv). Those time limits (i.e., three months after the close of a self-insurer's fiscal year for annual financial statements and one month after the close of such year for semi-annual affidavits) govern the submission of the financial reports specified in §§ 544.8(b)(3)(i) and 544.8(b)(3)(ii). The time limits are the same as in Part 542 revised of Title 46, CFR.

Both Exxon and Continental Oil assert that the time limits should be changed to four months for annual statements and two months for semi-annual affidavits. Neither party requested such expanded time limits in connection with Part 542 revised of Title 46, which is a much more comprehensive set of regulations enacted just last year and which set the standard for these regulations. If the Commission were to expand the time limits in these regulations, a self-insurer subject to both Part 542 revised and this Part 544 would still be governed by the shorter time limits in Part 542 revised, thus gaining no benefit from the change in these regulations. Further, § 544.8(b)(3)(iv) provides for the granting of extensions of the time limits in cases of necessity, and such extensions would provide more time than is being requested here.

Accordingly, no change will be made to section 544.8(b)(3)(iv).

SECTION 544.8(b)(5)—OTHER METHODS

This section prohibits an applicant from choosing any method of demonstrating financial responsibility not specified in the regulations (i.e., Insurance Form FMC-193, Surety Bond Form FMC-194, Guaranty Form FMC-195 or self-insurance), and prohibits any modifications to such methods.

Continental Oil asserts that the Commission "could severely hamper operations by smaller companies," which is contrary to the intent of the OCSLAA, unless other methods, modi-

fications of the methods and combinations of the methods are permitted to protect the interests of small companies.

First, acceptable combinations of the specified methods already are allowed by § 544.8(b). Second, "other" methods are not allowed because the OCSLAA, in section 305(a)(1), specifies the methods which the Commission may accept, and those methods are allowed by the regulations. Third, if the Commission were to permit "modifications" to the methods, it would, in effect, be allowing any method any party wished to establish, which was not intended by the OCSLAA.

Obviously, there would be no reason for Congress to mandate regulations governing the permitted methods if such regulations could be disregarded under the guise of "modifications." The permitted methods have been designed to comport as precisely as possible with the requirements of the underlying law. Accordingly, no change will be made.

SECTION 544.8(c)—FORMS—GENERAL

This section provides, in pertinent part, that, "If more than one insurer, guarantor, or surety joins in executing an insurance, guaranty, or surety bond form, such action shall constitute joint and several liability on the part of such joint underwriters."

Continental Oil asserts its belief that no underwriter would agree to be both jointly and severally liable and (as required by the OCSLAA) subject to direct suit by a damaged party.⁵ It correctly points out, however, that while the OCSLAA requires underwriters to be subject to direct suit, the law makes no mention of a joint and several liability requirement on the part of underwriters.

Lloyd's also commented upon the proposed joint and several liability provision stating that the concept was not contained in the OCSLAA and was objectionable from an insurer's point of view because it is contrary to normal underwriting practices. Lloyd's explained that the concept was incompatible with underwriting insurance in layers and with pooling arrangements whereby co-signing insurers are liable only for their respective shares of such insurance. While Lloyd's has joined in underwritings submitted to the Commission on a joint and several liability basis under Part 542 revised, it recommends that the joint and several liability provision in these Part 544 regulations be deleted in order to

⁵Continental Oil's contention is incorrect, as evidenced by the submission of jointly executed insurance forms to the Commission under Part 542 revised of Title 46, CFR. Those insurance forms contain both joint and several liability and direct suit provisions.

encourage greater insurance capacity for purposes of OCSLAA risks.

We believe that the last mentioned point should be given substantial weight. Unlike the Part 542 revised regulations, no United States insurer has confirmed that it will underwrite vessel risks under the OCSLAA, and Congress obviously was concerned with the matter, as evidenced by section 305(d) of the statute. That section requires a study to determine, among other things, "whether adequate private oil pollution insurance protection is available."

In order not to impede the underwriting industry's willingness to write OCSLAA pollution coverage, and because there is no specific requirement in the law for joint and several liability on the part of underwriters, that proposed provision will be deleted from § 544.8(c), with respect to insurers and surety companies, and from the insurance and surety bond forms which are appended to and made part of the regulations in Part 544.

Accordingly, if more than one insurer or surety company joins in executing an Insurance Form FMC-193 or Surety Bond Form FMC-194, each insurer or surety company will be liable only to the limits of its agreed coverage as stated on the insurance or bond form. No such form will be fully acceptable, of course, unless, in the aggregate, either 100 percent coverage is indicated or no individual percentages or layers are indicated. In the latter case, each insurer or surety will be presumed to be jointly and severally liable for the total amount of the risk, unless it can show the contrary.

We wish to emphasize that by deleting the contested provision we do not intend any change in our definition of "insurer" for purposes of these or any of the Commission's other water pollution regulations. Insurance entities such as the Underwriters at Lloyd's are considered to be single insurers for the limited purposes of liability under such regulations. That is, nothing contained herein should be construed as meaning, for example, that a claimant must proceed against each "underwriter" of each "syndicate" participating in a "Lloyd's" undertaking as a result of the deleted provision.

We also wish to note that the provision was not deleted with respect to guarantors. They are, in effect, self-insurers on behalf of (and, in some cases, in union with) vessel operators; and usually are closely affiliated companies. We see no justification in permitting a situation where artificial corporate shields and insulate vessel operators from compensating claimants up to the full amount of the financial responsibility required by the OCSLAA.

SECTION 544.9—ISSUANCE OF CERTIFICATES

Paragraph (d) of this section requires a certificant to notify the Commission in writing within five days after becoming aware of a change in the facts contained in the application or supporting documentation which lead to the issuance of a Certificate. Examples of such changes include vessel name changes or a change of address.

Paragraph (e) of this section requires a certificant to complete the reverse side of a voided Certificate and return it to the Commission within 10 days after the Certificate becomes void. The usual reason for a Certificate becoming void is cessation of the operator's responsibility for the vessel named on the Certificate.

Continental Oil asserts that the respective 5 and 10 day time limits in paragraphs (d) and (e) are too short and should be tripled to 15 and 30 days. In view of the fact that the proposed 5 and 10 day time limits are not key elements of the regulations, we have no objection to granting more time. Because, however, updating of information should be done as promptly as possible, we will double rather than triple the paragraph (d) time limits and make it 10 days. The paragraph (e) time limit will be tripled to 30 days as requested.

SECTION 544.11—DENIAL OR REVOCATION OF CERTIFICATES

Paragraph (b) of this section identified four situations where denial or revocation of a Certificate shall be immediate and without prior notice. For example, a Certificate is automatically voided when the certificant sells the vessel named thereon to a new operator. Similarly, denial of issuance of a Certificate occurs automatically in a case where an applicant sells the vessel for which the applicant had submitted an application in expectation of operating the vessel.

Continental Oil asserts that such immediate revocation or denial is patently outside due process. We disagree. The regulations do not, in all cases, provide for immediate revocation or denial. We would refer Continental Oil to the last sentence in paragraph (b) which requires the Commission to advise the applicant or certificant in writing of the reason for an intended denial or revocation in any case where such action is necessary to avoid an inappropriate denial or revocation. No change will be made to paragraph (b).

Paragraph (c) of this section concerns a situation where the Commission has written to a certificant warning it that its Certificate will be revoked because it failed to submit required financial statements or affidavits. In such case, the intended revoca-

tion would become effective 10 days after the date of the warning letter, unless the certificant demonstrated, prior to revocation, that the financial statements or affidavits had been timely filed.

Continental Oil recommends that the 10 day time limit be lengthened to 20 days.

We again point out that a self-insurer subject to regulations in this part would almost certainly be a self-insurer under the existing Part 542 revised regulations as well. Since the Part 542 revised regulations also contain the 10 day time limit, nothing would be gained by extending the time limit in these regulations, i.e., the 10 day time limit would still apply to the certificant under Part 542 revised.

If a self-insurer cannot readily demonstrate its ability to meet its statutory liability, it should not be permitted to maintain its status as a self-insurer. To that end, the Commission must ensure that it can determine the financial condition of each self-insurer, insofar as the built-in delays of the self-insurance reporting method permit, at least annually. If a self-insurer cannot, in a timely fashion, meet its reporting requirement, especially in view of the 45-day time extensions available under the regulations, it should not be necessary for the Commission to solicit compliance. No change, therefore, will be made to paragraph (c).

Paragraph (d) of this section provides that in certain cases an applicant or certificant may request a hearing to show that an intended denial or revocation is unwarranted. Continental Oil endorses that provision but believes that paragraph (b) must be amended to allow for it. We would again refer Continental Oil to the last sentence in paragraph (b) whereby the Commission must, in certain cases, give written notice of its intention to deny or revoke. Such written notice is the "intended denial or revocation" mentioned in paragraph (d) and is the catalyst for the request for a hearing provided for in paragraph (d). No amendment is necessary.

SECTION 544.12—FEES

Paragraph (e) of this section establishes a \$20 certification fee "for each Certificate issued." Continental Oil is unable to determine whether that \$20 fee would apply in a case where an applicant paid its \$100 application fee and was applying for only one Certificate. The answer is affirmative.

SECTION 544.13—ENFORCEMENT

Paragraph (a) of this section establishes a civil penalty of not more than \$10,000 for failure to comply with these Part 544 regulations, and provides that such penalty "may be as-

sessed and compromised by the Federal Maritime Commission pursuant to the provisions of section 312(a) of the Act."

Continental Oil asserts that in order to satisfy both the statute and constitutional due process, paragraph (a) must be amended to note that section 312(a) of the statute requires the giving of notice and opportunity for a hearing before a penalty is assessed.

While Continental Oil's assertion is incorrect, we have no objection to amending paragraph (a) as requested and will do so.

SECTION 544.14—SERVICE OF PROCESS

This section requires each applicant and underwriter to designate a United States agent for service of process on the application, insurance, bond or guaranty form it submits. Each designation must be acknowledged in writing by the designated agent unless that agent has furnished the Commission with a "master" concurrence. A "master" concurrence is an agreement to act as agent for service of process for any applicant or underwriter who designates such agent, provided that such applicant or underwriter meets certain conditions. An insurance adjusting firm, for example, may furnish a "master" concurrence to act as agent for any vessel operator insured by a particular insurer.

Continental Oil asserts that no United States company should have to designate an agent for service of process. Companies domiciled in the United States may appoint themselves as agent, as is stated on Part IV of the application form. No change will be made in this section of the regulations.

We urge all United States agents for service of process who have "master" concurrences on file with the Commission for purposes of Part 542 revised and/or Part 543 of this title, to either revise those documents to incorporate this Part 544 or file separate "master" concurrences for that purpose.

INSURANCE FORM FMC-193

Lloyd's and AIMU submitted comments with respect to this Form.

Lloyd's noted correctly, that in certain cases the OCSLAA places unlimited liability on a vessel owner and operator. It then goes on to state, however, that insurers are also subject to the unlimited liability and thus will not be inclined to write OCSLAA insurance coverage under these regulations because knowledge of the total risk exposure is an essential basis for any underwriting.

We do not believe that either the statute or the terms of proposed insurance Form FMC-193 impose such unlimited liability on the insurer as well as the owner and operator. We can

find nothing in the statute which would lead us to such an interpretation of mandatory unlimited liability on the part of an underwriter.⁶ Nor is there anything in the language of Insurance Form FMC-193 which would place such unlimited liability on the insurers who execute that form. To the contrary, in two places on the first page of that form the insurer's liability is limited, specifically, to \$300 per gross ton or \$250,000, whichever is greater, per incident. That specifically limited amount of liability in the insurance form is based on the wording in section 305(a)(1) of the OCSLAA which cannot be read as requiring financial responsibility in an amount greater than \$300 per gross ton or \$250,000, whichever is greater, despite the fact that the vessel owner or operator can become liable for a greater amount in certain situations. No amendment to the insurance form is necessary.

The comment submitted by the AIMU recommends an amendment to the proposed wording in the third paragraph of the insurance form, which now reads in part as follows:

"The insurer shall be entitled to invoke only the rights and defenses permitted by Title III of the Act to the vessel operator and the defense that the incident was caused by the willful misconduct of the vessel operator." (Emphasis added.)

The AIMU refers to the fact that section 305(c) of the OCSLAA makes available to an underwriter not only the rights and defenses permitted by the statute to the vessel operator, but the rights and defenses permitted to the vessel owner as well. The intent of the OCSLAA is the same, the AIMU points out, with respect to the defense that an incident was caused by the willful misconduct of the vessel owner; not just the vessel operator.

The AIMU also points to the fact that the operator may include the owner as an assured on the underlying insurance policy, frequently at the urging of the owner. Thus, in a case where a claim is asserted directly against an underwriter, it is important that the underwriter not be denied the right to invoke the defense that the incident was caused by the willful misconduct of the owner.

The position taken by the AIMU is correct (even if an owner was not named on any underlying insurance policy). It was not our intent to limit the defenses available to underwriters under the statute. This can be seen from a reading of § 544.8(d) of the reg-

⁶We assume Lloyd's is not referring to an underwriter's default under section 307(j)(5) of the OCSLAA whereby a "defendant" may lose the right to limit liability. We do not, in any case, read that section as meaning that an underwriter could be subjected to unlimited liability.

ulations which is meant to govern the insurance, bond and guaranty forms, and which purposely makes no mention of owners or operators. It should be obvious, moreover, that because under the OCSLAA any liability incurred by a vessel owner is also the liability of the vessel operator, equitably, any defense available to the owner also would be available to the operator—and, therefore, to the underwriter in a case of direct action against the underwriter.

The reason why we did not specifically mention vessel owners in the above quoted language of the insurance form is based on our intention not to burden underwriters with the requirement to name the often uninsured vessel owners on the forms. (See item number four under the "Supplementary Information" section in our January 3, 1979, Notice of Proposed Rulemaking.) Thus, only the assured operators need be named on the forms and the language of the forms is geared to the assured operators as applicants for Certificates. It would make for awkward construction and confusing reading to suddenly mention in the forms the role of some unnamed and perhaps uninsured owners with respect to defenses, while having remained silent in the forms concerning the role of such owners with respect to liability and other matters. By expanding the content of the forms in order to address such other matters (e.g., the inability of an owner to add or delete vessels) the forms would become unduly long and complex.

We agree with the position of the AIMU concerning the intent of the OCSLAA, but we do not believe it is desirable or necessary to amend the forms in order to protect that position. Since this matter of available defenses is important to all underwriters, the correct construction of the forms as to defenses will be specifically ordered below.

Now, therefore, it is ordered, That, March 29, 1979, Subchapter B of Chapter IV of Title 46 of the Code of Federal Regulations is amended by the addition of a new Part 544, as set forth below; and

It is further ordered, That the insurance, bond and guaranty forms appended hereto shall be construed as entitling underwriters to invoke the

⁷Underwriters are free, of course, to name both owners and operators as assureds on the insurance, bond and guaranty forms. By doing so, however, an underwriter would remain at risk with respect to the named owner even after the named operator was relieved of its operator status. Such risk would continue under the form until the date the owner sold the involved vessel (assuming an incident had not occurred prior to sale) or the date the risk was terminated pursuant to all of the terms of the form, whichever date occurred first.

rights and defenses permitted by Title III of the Outer Continental Shelf Lands Act Amendments of 1978 to both vessel owners and vessel operators, as well as the defense that an incident was caused by the willful misconduct of the vessel owners or vessel operators, whether or not owners are named as joint assureds on such forms or on any underlying insurance policies; and

It is further ordered, That the provision in § 544.8(b)(3)(i) which requires supplemental schedules to be audited by independent Certified Public Accountants is temporarily waived. Such supplemental schedules shall be acceptable if prepared by an appropriate financial officer of the self-insurer or guarantor. The hereby ordered waiver shall be applicable only to those persons who on the date of this Order are approved self-insurers or guarantors under Part 542 revised of Title 46 of the Code of Federal Regulations. This waiver shall terminate without further notice at the time new financial statements are due in accordance with § 544.8(b)(3)(iv).

By the Commission.

FRANCIS C. HURNEY,
Secretary.

PART 544—FINANCIAL RESPONSIBILITY FOR OIL POLLUTION—OUTER CONTINENTAL SHELF

- Sec.
- 544.1 Scope.
 - 544.2 Definitions.
 - 544.3 General.
 - 544.4 Where to apply and obtain forms.
 - 544.5 Time to apply.
 - 544.6 Applications, general instructions.
 - 544.7 Renewal of certificates.
 - 544.8 Establishing financial responsibility.
 - 544.9 Issuance of certificates.
 - 544.10 Operator's responsibility for identification.
 - 544.11 Denial or revocation of certificates.
 - 544.12 Fees.
 - 544.13 Enforcement.
 - 544.14 Service of process.

AUTHORITY: This Part 544 is issued under section 305(a)(1) of the Outer Continental Shelf Lands Act Amendments of 1978 and sections 1-201 and 1-203 of Executive Order 12123 of February 26, 1979.

§ 544.1 Scope.

(a) These regulations (Part 544 of Title 46 of the Code of Federal Regulations) implement the vessel financial responsibility requirements of the Outer Continental Shelf Lands Act Amendments of 1978. These regulations apply to all vessels engaged in any segment of the transportation of oil produced from an offshore facility on the Outer Continental Shelf when such vessels are operating in the waters above submerged lands seaward from the coastline of a State or the

waters above the Outer Continental Shelf.

(b) Vessels having on board Outer Continental Shelf—produced oil after that oil has been brought ashore, or loaded as a result of removal operations after an oil spill, do not thereby become subject to the regulations in this Part.

§ 544.2 Definitions.

For purposes of this Part, the following terms shall have the indicated meanings:

(a) "Act" means the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372).

(b) "Applicant" means any vessel operator, as defined in paragraph (p) of this section, who has applied for a Certificate or for the renewal of a Certificate.

(c) "Application" means Application for Certificate of Financial Responsibility (Outer Continental Shelf), Form FMC-192.

(d) "Cargo" means oil carried on board a vessel for purposes of transportation, in any quantity and under any conditions.

(e) "Certificator" means any operator, as defined in paragraph (p) of this section, who has been issued a Certificate.

(f) "Certificate" means a Certificate of Financial Responsibility (Outer Continental Shelf) issued by the Federal Maritime Commission pursuant to the regulations in this Part.

(g) "Commission" means the Federal Maritime Commission.

(h) "Damages" means economic loss arising out of or directly resulting from oil pollution, including injury to, or destruction of, real or personal property; loss of use of real or personal property; injury to, or destruction of, natural resources; loss of use of natural resources; loss of profits or impairment of earning capacity due to injury to, or destruction of, real or personal property or natural resources; loss of tax revenue for a period of one year due to injury to real or personal property; and reasonable costs associated with preparation and presentation of natural resource damage claims. Removal costs are not included in this definition.

(i) "Discharge" means any emission, intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emptying, or dumping.

(j) "Financial responsibility" means proof of financial ability to satisfy claims for damages and removal costs as required by section 305(a)(1) of the Act.

(k) "Incident" means any occurrence or series of related occurrences, involving one or more vessels, which causes or poses an imminent threat of oil pol-

lution from any source. For purposes of these regulations, an "imminent" threat, as used in the Act, is synonymous with a "substantial" threat, as used in section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321).

(l) "Insurer" means one or more acceptable insurance companies, corporations or associations of insurers, shipowners' protection and indemnity associations, or other persons acceptable to the Commission.

(m) "Offshore facility" includes any oil refinery, drilling rig, drilling structure, oil storage or transfer terminal, or pipeline, or any appurtenance related to any of the foregoing, which is used to drill for, produce, store, handle, transfer, process, or transport oil produced from the Outer Continental Shelf, and is located on the Outer Continental Shelf, except that a vessel or a deepwater port (as the term "deepwater port" is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502)) is not included in this definition.

(n) "Oil" means petroleum, including crude oil or any fraction or residue therefrom, whether or not carried on board a vessel.

(o) "Oil pollution" means:

(1) The presence of oil, either in an unlawful quantity or which has been discharged at an unlawful rate (i) in or on the waters above submerged lands seaward from the coastline of a State, or on the adjacent shoreline of such State or (ii) on the waters of the contiguous zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606); or

(2) The presence of oil in or on the waters of the high seas outside the territorial limits of the United States (i) when discharged in connection with activities conducted under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) or (ii) causing injury to or loss of natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States; or

(3) The presence of oil in or on the territorial sea, navigable or internal waters, or adjacent shoreline of a foreign country, in a case where damages are recoverable by a foreign claimant under Title III of the Act.

(p) "Operator" or "vessel operator" means a demise charterer or any other person responsible for the operation of a vessel, including a person who both owns and is responsible for the operation of a vessel.

(q) "Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters (as the term "lands beneath navigable waters" is defined in section 1301 of the Sub-

merged Lands Act (43 U.S.C. 1301)), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(r) "Owner" or "vessel owner" means any person holding legal or equitable title to a vessel. In a case where a Certificate of Registry or equivalent document has been issued, the owner shall be deemed to be the person or persons whose name or names appear thereon as owner; and *provided, however*, That where a Certificate of Registry has been issued in the name of the President or Secretary of an incorporated company pursuant to 46 U.S.C. 15, such incorporated company will be deemed to be the owner; *provided, further*, That this definition does not include a person who, without participating in the management or operation of a vessel, holds indicia of ownership primarily to protect a security interest in that vessel.

(s) "Person" includes, but is not limited to, an individual, a governmental entity, a firm, a corporation, an association, a partnership, a joint-stock company, a joint venture, a consortium, a business trust, or an unincorporated organization.

(t) "Public vessel" means a vessel, not engaged in commerce, the operator of which is the Government of the United States or a State or political subdivision thereof, or the government of a foreign entity.

(u) "Remove," "removing," or "removal" means (1) the physical removal of oil from the water and shorelines; (2) the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare (including, but not limited to, fish, shellfish, wildlife and public or private property, shorelines and beaches), resulting from a discharge or substantial threat of a discharge of oil; (3) the restoration or replacement of natural resources damaged or destroyed as the result of a discharge of oil in violation of section 311(b) of the Federal Water Pollution Control Act; (4) reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from such incident; and (5) measures of a similar or related nature under section 5 of the Intervention on the High Seas Act (33 U.S.C. 1474).

(v) "Submerged lands seaward from the coastline of a State" means the area of "lands beneath navigable waters" as described in section 2(a) of the Submerged Lands Act (43 U.S.C. 1301(a)(2)). Generally, that area can be described as all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastline of a State, and to the boundary line of each such State where in

any case such boundary extends seaward (or into the Gulf of Mexico) beyond three geographical miles.

(w) "Underwriter" means an insurer, a surety company, a guarantor, or any other person, other than the operator, who provides evidence of financial responsibility for an operator.

(x) "United States" or "State" means any place under the jurisdiction of the United States, including, but not limited to, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands.

(y) "Vessel" means every description and size of watercraft or other artificial contrivance, other than a public vessel, which is operating in the waters above the Outer Continental Shelf or in the waters above submerged lands seaward from the coastline of a State, and which is engaged in any segment of the transportation of Outer Continental Shelf-produced oil from an offshore facility, including carrying, lightering, transshipping, or storing such oil.

§ 544.3 General.

(a) The regulations in this Part set forth the procedures whereby an owner and operator of a vessel subject to these regulations can demonstrate that each is financially able to meet liability for removal costs and damages in the amount of \$300 per gross ton of such vessel, or \$250,000, whichever is greater. That amount represents the maximum amount of liability under section 304 of the Act in a case where the owner and operator of a particular vessel are entitled to limit their liability. Owners and operators are jointly, severally and strictly liable.

(b) Upon the satisfactory demonstration of financial responsibility in accordance with the regulations of this Part, the Commission shall issue Certificates which are to be carried aboard the vessels named on such Certificates. The carriage of a valid Certificate will indicate to the United States Coast Guard that the vessel named thereon is in compliance with the financial responsibility provisions of the Act. Failure to carry a valid Certificate subjects a vessel to enforcement action by the Coast Guard and also subjects the vessel owner and operator to penalty procedures by the Commission.

(c) Where a vessel is operated by its owner, or the owner is responsible for its operation, the owner shall be considered to be the operator and shall file the application for a Certificate. In all other cases, the vessel operator shall file the application.

(d) The operator of each vessel subject to the regulations in this Part shall submit as soon as possible to the Commission a properly completed Application Form FMC-192, acceptable evidence of financial responsibility and application and certification fees. Otherwise, such vessel operator shall not permit such vessel to have on board, for any purpose, oil that has been produced by an offshore facility, unless that oil has previously been brought ashore at a United States or foreign location.

(e) The gross tonnage of a vessel subject to these regulations shall be presumed to be that indicated in the vessel's Certificate of Registry, or, in the absence thereof, other marine documents acceptable to the Commission. If a vessel has more than one gross tonnage, the higher tonnage shall apply.

§ 544.4 Where to apply and obtain forms.

(a) Applications for Certificates (Form FMC-192), together with fees and evidence of financial responsibility, shall be filed with the Commission at the following address:

Office of Water Pollution Responsibility, Federal Maritime Commission, Washington, D.C. 20573.

(b) Regulations concerning application forms are set forth in §§ 544.5 and 544.6. Regulations concerning fees are set forth in § 544.12, and regulations concerning evidence of financial responsibility are set forth in § 544.8. Forms may be obtained from the Commission's Office in Washington, D.C. and from the Commission District Offices at New York, New York; New Orleans, Louisiana; Miami, Florida; San Francisco, California; Chicago, Illinois; Savannah, Georgia; San Pedro, California and Hato Rey, Puerto Rico. All requests for assistance, including telephone inquiries, in completing applications should be directed to the Commission's Office of Water Pollution Responsibility in Washington, D.C.

§ 544.5 Time to apply.

A completed application, fees and evidence of financial responsibility shall be filed as soon as possible before March 17, 1979. After that date, filings shall be made at least 21 days prior to the date the Certificate is required. Applications will be processed in the order in which they are filed.

§ 544.6 Applications, general instructions.

(a) All applications and supporting documents shall be in English. All monetary terms shall be in United States currency.

(b) Only vessel operators, as defined in paragraph (p) of section 544.2, may apply for a Certificate.

(c) The application shall be signed by an authorized official of the applicant, whose title shall be shown on the application. A written statement proving authority to sign shall be required where the signer is not disclosed on the application as an individual (sole proprietor) applicant, a partner in a partnership applicant, or a director or officer of a corporate applicant.

(d) If, prior to the issuance of a Certificate, the applicant becomes aware of a change in any of the facts contained in the application or supporting documentation, the applicant shall notify the Commission in writing, within five (5) days.

§ 544.7 Renewal of certificates.

Applications for renewal Certificates shall be made in writing at least 21 days, but no earlier than 90 days, prior to the expiration dates of the existing Certificates. Each application shall be accompanied by appropriate recertification (renewal) fees, shall identify any item of information which has changed since the original application was filed, and shall set forth the correct information in full.

§ 544.8 Establishing financial responsibility.

(a) *General*.—In addition to filing Form FMC-192 and appropriate fees, each vessel operator subject to the regulations in this Part shall demonstrate that it is able to satisfy liability under Title III of the Act, in an amount not less than \$300 per gross ton or \$250,000, whichever is greater. The evidence of financial responsibility required by these regulations shall cover the vessel owners as well as the vessel operators, jointly and severally. The amount of evidence of financial responsibility required by the regulations in this Part is separate from and in addition to the amount, if any, required of an applicant pursuant to Parts 540, 542 and 543 of this title.

(b) *Methods*.—An applicant shall establish evidence of financial responsibility by any one of, or by any acceptable combination of, the following methods:

- Insurance;
- Surety Bond;
- Self-Insurance;
- Guaranty.

(1) *Insurance*.—Insurance may be established by filing with the Commission an Insurance Form FMC-193 executed by an insurer which is acceptable to the Commission for purposes of the regulations in this Part;

(2) *Surety Bond*.—An applicant may file with the Commission a Surety Bond Form FMC-194, executed by the applicant and by a surety company which is located in the United States and which is acceptable to the Commission for purposes of the regula-

tions in this Part. To be acceptable, surety companies must, at a minimum, be certified by the United States Department of the Treasury with respect to the issuance of Federal bonds in the penal sum of the bonds to be issued under these regulations;

(3) *Self-Insurance*.—A vessel operator may qualify as a self-insurer by maintaining, in the United States, working capital and net worth, each in the amount of \$300 per gross ton of the largest vessel to be self-insured or \$250,000, whichever is greater. For the purposes of this subparagraph, "working capital" is defined as the amount of current assets located in the United States, less all current liabilities; and "net worth" is defined as the amount of all assets located in the United States, less all liabilities. The amounts of working capital and net worth required by this subparagraph are in addition to the amounts of working capital and net worth, if any, required by Part 540 (Security for the Protection of the Public), Part 542 (Financial Responsibility for Water Pollution) and Part 543 (Oil Pollution Cleanup—Alaska Pipeline) of this title. Maintenance of the required working capital and net worth shall be demonstrated by submitting with the initial application the items specified in subdivision (i) of this subparagraph for the applicant's last fiscal year preceding the date of application. Thereafter, for each of the applicant's fiscal years, the applicant/certificant shall submit the items specified in subdivisions (i) and (ii) of this subparagraph and shall be subject to the provisions of subdivisions (iii), (iv), (v) and (vi) of this subparagraph;

(i) *Initial and Annual Submissions*.—An applicant/certificant shall submit, for its most recent fiscal year, a non-consolidated balance sheet and related statement of income, retained earnings and changes in financial position for the year then ended audited by an independent Certified Public Accountant. Those financial statements shall be accompanied by an additional statement from the applicant's/certificant's Treasurer (or equivalent official) certifying to both the amount of current assets and the amount of total assets, included in the accompanying balance sheet, which are located in the United States and acceptable for purposes of this Part, e.g., not pledged for purposes of Part 540, Part 542 or Part 543. If the balance sheet and related statement of income, retained earnings and changes in financial position cannot be submitted in non-consolidated form, consolidated statements may be submitted if accompanied by supplemental schedules prepared by the applicant/certificant and audited by an independent Certified Public Accountant, which present the amount

by which (A) the applicant's/certificant's total assets, located in the United States and acceptable for purposes of this Part, exceed its total liabilities, and (B) the applicant's/certificant's current assets, located in the United States and acceptable for purposes of this Part, exceed its current liabilities. Such additional statement audited by the Certified Public Accountant must specifically name the applicant/certificant, must indicate that the amounts so presented relate only to the applicant/certificant, apart from any other entity, and must identify the consolidated financial statement to which it applies;

(ii) *Semi-Annual Submissions*.—When the applicant's/certificant's demonstrated net worth is not at least ten times the required amount, an affidavit shall be filed by the applicant's/certificant's corporate Treasurer (or equivalent official) covering the first six months of the applicant's/certificant's fiscal year. Such affidavits shall state that neither the working capital nor the net worth have, during the first six months, fallen below the required amounts;

(iii) *Additional Submissions*.—If an applicant's/certificant's annual and semi-annual submissions of financial data under Parts 540, 542 or 543 demonstrate amounts large enough to meet the requirements of this Part as well, separate annual and semi-annual submissions for purposes of this Part shall not be necessary. Additional financial information, however, shall be submitted upon request of the Commission. All applicants/certificants who choose self-insurance shall notify the Commission within five days of the date such persons know, or have reason to believe, that the amounts of working capital or net worth have fallen below the amounts required by this subparagraph;

(iv) *Time for Submissions*.—All required annual financial statements shall be received by the Commission within three calendar months after the close of the applicant's/certificant's fiscal year, and all six-month affidavits within one calendar month after close of the applicable six-month period. Upon written request, the Commission may grant a reasonable extension of the time limits for filing financial statements/affidavits, provided that the request sets forth good and sufficient reason to justify the requested extension and is received 15 days before the statements/affidavits are due. The Commission will not consider a request for an extension of more than 45 days;

(v) *Failure to Submit*.—Failure to timely file any statement, data, or affidavit required by this subparagraph (3) shall cause the revocation of the Certificate;

(vi) *Waivers of Submissions.*—For good cause shown in writing by the applicant/certificant, the Commission may waive the working capital requirement in cases where the applicant/certificant is an economically regulated public utility, a municipal or higher-level governmental entity, or an entity which operates solely as a charitable, non-profitmaking organization. The Commission will consider good cause to have been shown in those cases when the applicant/certificant demonstrates in writing that the grant of such waiver would benefit at least a local public interest without resulting in undue risk to the environment and without resulting in undue risk that the applicant's/certificant's limits of liability could not be met. In addition, for good cause shown in writing by an applicant/certificant, the Commission may waive the working capital requirement in any case where it can be demonstrated that working capital is not a significant factor in the applicant's/certificant's financial condition. An applicant's/certificant's net worth in relation to the amount of its exposure under the Act, as well as a history of stable operations will be major elements in such demonstration;

(4) *Guaranty.*—A vessel operator may file with the Commission a Guaranty Form FMC-195 executed by a guarantor acceptable to the Commission for purposes of the regulations in this Part. A guarantor shall be subject to and must fully comply with all of the self-insurance provisions of subparagraph (3) of this paragraph (b). In addition, the amounts of working capital and net worth required to be demonstrated by an acceptable guarantor shall be no less than the aggregate amounts underwritten as a guarantor and self-insurer pursuant to these regulations and the regulations of Part 540, Part 542 and 543 of this title;

(5) *Other Methods.*—An applicant may not choose any other method of demonstrating financial responsibility, nor any modifications of any of the foregoing methods;

(c) *Forms—General.*—The Commission's Application Form FMC-192, Insurance Form FMC-193, Surety Bond Form FMC-194 and Guaranty Form FMC-195, as appended to this Part, are hereby incorporated into this Part. If more than one guarantor joins in executing a guaranty form, such action shall constitute joint and several liability on the part of such joint guarantors. Each form submitted to the Commission pursuant to these regulations shall set forth in full the correct name of the vessel operator to whom Certificates are to be issued.

(d) *Direct Action.*—Forms FMC-193 through FMC-195 shall permit a claimant to commence an action for removal cost and damage claims au-

thorized by section 303 of the Act directly against the underwriter. Such forms shall also provide that in the event such action is brought directly against the underwriter such underwriter shall be entitled to invoke only those rights and defenses permitted by section 305(c) of the Act.

(e) *Public Access to Data.*—Financial data filed by applicants, certificants, and underwriters shall be public information to the extent required by the Freedom of Information Act and permitted by the Privacy Act.

§ 544.9 Issuance of certificates.

(a) After acceptable evidence of financial responsibility has been provided and appropriate fees have been paid, a separate Certificate for each vessel listed on completed applications shall be issued by the Commission. Such Certificates will be issued only to vessel operators, as defined in paragraph (p) of section 544.2 and shall be effective for not more than three years from the date of issue.

(b) The original Certificate shall be carried on the vessel named on the Certificate. However, a legible copy (certified as accurate by a notary public or other person authorized to take oaths) may be carried in lieu of the original Certificate if the vessel is an unmanned barge which (1) does not require a Certificate of Inspection from the United States Coast Guard, (2) is owned and operated by United States entities and (3) does not have a facility which the vessel operator believes would offer suitable protection for the original Certificate issued by the Commission. If a copy is carried aboard such barge, the original shall be retained at a location in the United States and shall be kept readily accessible for inspection by U.S. Government officials.

(c) Erasures or other alterations on a Certificate or copy is prohibited (even if made by government authorities) and automatically voids such Certificate or copy.

(d) If at any time after a Certificate has been issued a certificant becomes aware of a change in any of the facts contained in the application or supporting documentation, the Certificant shall notify the Commission in writing within ten (10) days of becoming aware of the change.

(e) If for any reason, including a vessel's demise or transfer to a new operator, a certificant ceases to be the vessel's operator, as defined in paragraph (p) of § 544.2, the certificant shall, within thirty (30) days, complete the reverse side of that vessel's original Certificate and return it to the Commission. Such Certificate and any copy thereof is automatically void (whether or not returned to the Commission), and its use is prohibited. Where such

voided Certificate cannot be returned because it has been lost or destroyed, the certificant shall, as soon as possible, submit the following information to the Commission in writing:

- (1) The number of the Certificate and the name of the vessel;
- (2) The date and reason why the certificant ceased to be the operator of the vessel;
- (3) The location of the vessel on the date the certificant ceased to be the operator;
- (4) The name and mailing address of the person to whom the vessel was returned, sold or transferred; and
- (5) The reason why the Certificate cannot be returned.

§ 544.10 Operator's responsibility for identification.

Except in the case of unmanned barges, operators who are not also the owners of certificated vessels shall carry on board such vessels the original or legible copy of the demise charter-party or any other written document which demonstrates that such operators are, in fact, the operators designated on the Certificates. Such documents shall be presented for examination to U.S. Government officials upon request.

§ 544.11 Denial or revocation of certificates.

(a) A certificate shall be denied or revoked for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for an initial Certificate or a request for a renewal Certificate of the retention of an existing Certificate;

(2) Failure of an applicant or certificant to establish or maintain acceptable evidence of financial responsibility as required by the regulations in this Part;

(3) Failure to comply with or respond to lawful inquiries, regulations, or orders of the Commission pertaining to activities subject to this Part;

(4) Failure to timely file the statements or affidavits required by subdivisions (i), (ii), or (iii) of subparagraph (3) of paragraph (b) of § 544.8 of these regulations; or

(5) Cancellation or termination of any insurance form, surety bond or guaranty issued by an underwriter pursuant to these regulations, unless acceptable substitute evidence of financial responsibility has been submitted to the Commission.

(b) Denial or revocation of a Certificate shall be immediate and without prior notice in a case where the applicant or certificant (1) is no longer the operator of the vessel in question, (2) fails to furnish acceptable evidence of financial responsibility in support of

FEDERAL MARITIME COMMISSION,
WASHINGTON, D.C. 20573

[Form FMC-192]

APPLICATION FOR CERTIFICATE OF FINANCIAL
RESPONSIBILITY (OUTER CONTINENTAL SHELF)

INSTRUCTIONS: Please type or print clearly and submit this application to the Office of Water Pollution Responsibility, Federal Maritime Commission, Washington, D.C. 20573. The application is in four parts: Part I—General; Part II—Evidence of Financial Responsibility; Part III—Declaration; and Part IV—Concurrence of Agent. Applicants must answer Item 4 and all other applicable questions. If a question does not apply, answer "not applicable." Incomplete applications will be returned. If additional space is required, supplemental sheets may be attached.

[THIS SPACE FOR USE BY FMC ONLY]

General (Part I of 4 Parts)

1. (a) Legal name of applicant (name of legally responsible operator of all vessels listed in Part II):

(b) English equivalent of legal name if customarily written in language other than English:

(c) Trade name, if any:

2. (a) Is this the first time the above-named applicant is applying for a Certificate of Financial Responsibility (Outer Continental Shelf)? (NOTE.—This question does not refer to any other type of Certificate.)

[] Yes.

[] No. If "No," complete item "b" below.

(b) What FMC control number was assigned to the first Application Form FMC-192?

3. (a) State applicant's legal form of organization, i.e., whether operating as an individual, corporation, partnership, association, joint stock company, business trust or other organized group of persons (whether incorporated or not), or as a receiver, trustee, or other liquidating agent, and briefly describe current business activities and length of time engaged therein:

(b) If a corporation, association, or other organization, please indicate:

Name of state or foreign country in which incorporated or organized:

Date of incorporation or organization:

(c) If a partnership, give name and address of each partner:

4. Name and address of applicant's United States agent or other person authorized by applicant to accept legal service in the United States (see PART IV):

Evidence of Financial Responsibility (Part
II of 4 Parts)

5. Please list each vessel for which a Certificate is desired. Vessels for which the operator named in item 1(a) is not responsible and should not be listed in this form. In column (f) indicate the number "1" if the operator is also the registered owner. Indicate "2" in column (f) if the operator is not the registered owner.

(a) Name of Vessel.

(b) Type of Vessel.

(c) Country of registry.

(d) Registration number.

(e) Gross tons.

(f) "1" or "2".

(g) If applicant indicated "2" for any vessel listed above in column 5(f), please indicate:

Name of vessel.

an application, (3) permits the cancellation or termination of the insurance form, surety bond or guaranty upon which the continued validity of the Certificate was based, or where (4) the Certificate no longer reflects current information, as would occur in the case of a name change or other change. In any other case, prior to the denial or revocation of a Certificate, the Commission shall advise the applicant or certificate, in writing, of its intention to deny or revoke the Certificate, and shall state the reason therefor.

(c) If the reason for an intended revocation is failure to file the required financial statements or affidavits, the revocation shall be effective ten (10) days after the date of the notice of intention to revoke, unless the certificate shall, prior to revocation, demonstrate that the required statements were timely filed.

(d) If the intended denial or revocation is based upon one of the reasons in § 544.11(a)(1) or (3), the applicant or certificate may request, in writing, a hearing to show that the applicant or certificate is in compliance with the provisions of the regulations in this Part, and, if such request is received within 30 days after the date of the notification of intention to deny or revoke, such hearings shall be granted by the Commission. Hearings pursuant to these regulations shall be conducted in accordance with the Commission's Rules of Practice and Procedure (46 CFR Part 502).

§ 544.12 Fees.

(a) This section establishes the application fee which shall be imposed by the Commission for processing Application Form FMC-192 and also establishes the certification fee which shall be imposed for the issuance or renewal of Certificates.

(b) No Certificate shall be issued unless the application and/or certification fees set forth in paragraphs (d) and (e) of this section have been paid.

(c) Fees shall be paid by check, draft or postal money order in United States currency, and be made payable to the Federal Maritime Commission.

(d) Each applicant who submits Application Form FMC-192 for the first time shall pay an initial, non-refundable application fee of \$100. Applications for additional Certificates, or to amend or renew existing Certificates, shall not require new application fees. However, once an Application Form FMC-192 is withdrawn or denied for any reason, and the same applicant, holding no valid Certificates, wishes to reapply for a Certificate (covering the same or new vessel), a new application form and application fee of \$100 shall be required.

(e) Applicants shall pay a \$20 fee for each Certificate issued. Applicants shall submit such certification fee for each vessel listed in, or later added to, an application. The \$20 certification fee shall be required to renew or to re-issue a Certificate for any reason, including, but not limited to, a name change or a lost Certificate.

(f) Certification fees shall be refunded, upon receipt of a written request, if the application is withdrawn or denied prior to issuance of the Certificates. Over-payments in the application fees and/or the certification fees will be refunded on request only if the refund is \$10 or more. However, any overpayments not refunded will be credited, for a period of three years from the date of receipt of the monies by the Commission, for the applicant's possible future use in connection with the regulations in this Part.

§ 544.13 Enforcement.

(a) Any operator of a vessel subject to the regulations in this Part who fails to comply with such regulations shall be subject to a civil penalty of not more than \$10,000 for each such failure to comply, in accordance with section 312(a) of the Act. Such penalties may be assessed and compromised by the Federal Maritime Commission pursuant to the provisions of section 312(a) of the Act. No penalty shall be assessed until notice and an opportunity for hearing on the alleged violation have been given.

(b) The Secretary of the Department in which the Coast Guard is operating may (1) deny entry to any port or place in the United States or the navigable waters of the United States and (2) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to the regulations in this Part, which, upon request, does not produce a valid Certificate.

§ 544.14 Service of process.

When executing the forms required by the regulations in this Part, each applicant and underwriter shall designate thereon a person in the United States as its agent for service of process for the purposes of Title III of the Act and of the regulations in this Part. Each designation shall be acknowledged in writing by the designee unless the designee, pursuant to these regulations, has already furnished the Commission with a master concurrence showing that it has agreed in advance to act as the United States agent for service of process for the applicant or underwriter in question.

Owner.

Owner's mailing address.

6. Items 7 through 10 are optional methods of establishing financial responsibility. Check the appropriate box(es) below and answer only the item(s) which are applicable to this application:

- [] Insurance (Answer Item 7);
 [] Surety Bond (Answer Item 8);
 [] Guaranty (Answer Item 9);
 [] Self-Insurer (Answer Item 10).

7. Name and address of applicant's insurer (evidence of insurance acceptable to the Federal Maritime Commission must be filed on Insurance Form FMC-193 before a Certificate will be issued):

8. (a) Total amount of surety bond. (Surety Bond Form FMC-194 must be filed with and acceptable to the Commission before a Certificate will be issued.):

(b) Name and address of applicant's surety:

9. (a) Name and address of applicant's guarantor (Guaranty Form FMC-195 and all required financial data must be filed before a Certificate will be issued.):

(b) Guarantor's fiscal year:
 (Month) _____ (Day) _____ to
 (Month) _____ (Day) _____

10. If applicant intends to qualify as a self-insurer, attach all required financial data and indicate fiscal year:
 (Month) _____ (Day) _____ to
 (Month) _____ (Day) _____

Declaration (Part III of 4 Parts)

11. Applicant's mailing address (street, number, post office box, city, state or country, and ZIP code if in the United States):

12. Telex Number and answerback:

13. Type or print in this space the name and title of the official who is signing this application:

14. Area code and telephone number:

I declare that I have examined this application, including any accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Furthermore, it is agreed that the applicant named in item 1(a) of Part I above is the responsible operator of all vessels now listed in or later added to this application. I also agree that in the event the agent designated in item 4 of Part I above, or his replacement as may be appointed later with the approval of the Federal Maritime Commission, cannot be served due to death, disability, or unavailability, the Secretary, Federal Maritime Commission, shall be deemed to be the agent for service of process. I have signed this application in my above-indicated capacity as an authorized official of the applicant, or, if acting under a power of attorney, pursuant to the power vested in me by the said applicant as evidenced by the attached document.

IMPORTANT

Date: _____

Signature of above official: _____

NOTE.—Please be sure that Parts I, II, and III have been completed in full and that Part III has been dated and signed. Then proceed to Part IV, attached.

The statements hereinabove set forth are made subject to penalties prescribed by law for any person who knowingly and willfully makes false statements on any matter

within the jurisdiction of an agency of the United States (18 U.S.C. 1001).

Concurrence of Agent (Part IV of 4 Parts)

Part IV-A must be completed by the person designated in Item 4 of Part I to serve as applicant's United States agent for service of legal process. Part IV-B must be completed by the applicant. After Parts IV-A and IV-B are completed, Part IV should be submitted to the Commission by the applicant or by the agent, either separately or together with Parts I, II, and III. (Part IV need not be completed if the agent designated in Item 4 of Part I already has submitted to the Commission an acceptable blanket Concurrence of Agent, agreeing to serve on behalf of certain applicants who designate such agent. Part IV also need not be completed if the applicant is a United States entity and has appointed itself as agent in item 4 of Part I.)

Part IV-A

It is hereby agreed that (Type name of United States agent) _____ shall serve as the herein named applicant's United States agent for service of legal process for purposes of Part 544, Title 46, CFR, and Title III of the Outer Continental Shelf Lands Act Amendments of 1978. This designation and agreement shall cease immediately in the event that said applicant designates a new agent acceptable and agreed to by the Federal Maritime Commission.

Date: _____
 Signature of person signing on behalf of agent: _____
 Title: _____
 Business address: _____

Part IV-B

TO BE COMPLETED BY APPLICANT

Name of applicant (from item 1(a)): _____
 Signature of person signing on behalf of applicant: (person signing here should also sign in appropriate place on Part III)
 Date: _____
 Type or print name and title: _____

FEDERAL MARITIME COMMISSION

INSURANCE FORM FMC-193 NO. 3 FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER TITLE III OF THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978 (P.L. 95-372)

(Name of Insurer) _____
 (hereinafter "Insurer") hereby certifies that for purposes of complying with the provisions of section 305(a)(1) of the Outer Continental Shelf Lands Act Amendments of 1978 (hereinafter "Act"), each of the vessel operators specified in the schedules below is insured by it, in respect to each of the vessels respectively specified therein, against liability for removal costs and damages to which such vessel operators could be subjected under Title III of the Act. The amount of liability insured herein in \$300 per gross ton or \$250,000, whichever is greater, per vessel, in any one incident.

(Name of Agent) _____
 with offices located at _____, is hereby designated as the Insurer's agent for service of process for the purposes of Title III of the Act and for the purposes of the regulations of the Federal Maritime Commission

(Part 544 of Title 46, Code of Federal Regulations). If the designated agent cannot be served due to death, disability or unavailability, the Secretary of the Federal Maritime Commission shall be deemed to be the agent for service of process.

The Insurer consents to be sued directly in respect of any claim authorized under section 303 of the Act against any of the said operators; provided, however, that in any such direct action its liability per vessel in any one incident shall not exceed \$300 per gross ton of such vessel or \$250,000, whichever is greater. The Insurer shall be entitled to invoke only the rights and defenses permitted by Title III of the Act to the vessel operator and the defense that the incident was caused by the willful misconduct of the vessel operator.

The insurance evidenced by this undertaking shall be applicable only in relation to incidents occurring on or after the effective date and before the termination date of this undertaking, and shall be applicable only to incidents giving rise to claims authorized under section 303 of the Act in respect to any of the below-listed vessels.

The effective date of this undertaking shall, for each vessel listed below, be the date such vessel is named in or added to the schedules below. For each such vessel, the termination date of this undertaking shall be 30 days after the date of receipt of written notice by the Federal Maritime Commission (FMC) that the Insurer has elected to terminate the insurance evidenced by this undertaking, and has so notified the vessel operator. However, for any vessel carrying Outer Continental Shelf-produced oil as cargo that has been loaded prior to the scheduled date of termination, such termination shall not take effect until (1) completion of discharge of such cargo, or (2) until 60 days after the date of receipt in writing by the FMC of notice that the Insurer has elected to terminate the insurance evidenced by this undertaking, whichever date is earlier.

Termination of this undertaking as to any vessel shall not affect the liability of the Insurer in connection with an incident occurring prior to the date such termination becomes effective.

If, during the currency of this undertaking, a below-named operator requests that an additional vessel be made subject to this undertaking, and if the Insurer accedes to such request and should so notify the FMC, then such vessel shall be deemed included in the schedules below.

The definitions in 46 CFR 544.2 shall apply to this undertaking. Effective Date of Coverage for Vessels Originally Named on this Undertaking:

 day/month/year

 (Name of Insurer)

 (Mailing Address)

By:

 (Signature of Official Signing on Behalf of Insurer)

(Typed Name and Title of Signer)
Insurance Form FMC-193 No. _____
SCHEDULE OF VESSELS AND ASSURED OPERATORS

Vessel	Gross tons	Assured operator

Insurance Form FMC-193 No. _____
SCHEDULE OF VESSELS AND ASSURED OPERATORS ADDED TO ABOVE SCHEDULE

Vessel	Gross tons	Assured operator	Date added

Insurance Form FMC-193 No. _____
Surety Co. Bond No. _____

FEDERAL MARITIME COMMISSION
OIL DISCHARGE SURETY BOND FORM FMC-194 FURNISHED AS EVIDENCE OF FINANCIAL RESPONSIBILITY UNDER TITLE III OF THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978 (PUB. L. 95-372)

KNOW ALL MEN BY THESE PRESENTS, that We _____ (Name of Vessel Operator) _____ of (City) _____ (State and Country) as Principal (hereinafter called Principal), and _____ (Name of Surety) a company created and existing under the laws of _____ (State and Country) and authorized to do business in the United States, as Surety (hereinafter called Surety), are held and firmly bound unto the United States of America and other claimants for damages and removal cost liability under Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (hereinafter "Act") in the penal sum of \$

(Penal Sum May Not Be Less Than \$250,000)

for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal intends to become or is a holder of a Certificate of Financial Responsibility (Outer Continental Shelf) pursuant to the provisions of Part 544 of Title 46, Code of Federal Regulations, and has elected to file with the Federal Maritime Commission (FMC) such a bond as will insure financial responsibility to meet liability for removal costs and damages in connection with claims authorized by section 303 of the Act, and

WHEREAS, this bond is written to ensure compliance by the Principal with the requirements of section 305(a)(1) of the Act, and shall inure to the benefit of claimants under Title III of the Act,

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall pay or cause to be paid to claimants any sum or sums for which the Principal may be held legally liable under Title III of the Act, then this obligation, to the extent of such payment, shall be void, otherwise to remain in full force and effect.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond. In no

event shall the Surety's obligation hereunder exceed the amount of said penalty, provided that the Surety furnishes written notice to the FMC forthwith of all claims filed, judgments rendered, and payments made by said Surety under this bond.

Any claim for which the Principal may be liable under Title III of the Act may be brought against the Surety. In the event of such direct claim, the Surety shall be entitled to invoke only (1) the rights and defenses permitted by Title III of the Act to the Principal (vessel operator) and (2) the defense that the incident giving rise to the claim was caused by the willful misconduct of the Principal.

This bond is effective the _____ day of _____, 19____, 12:01 a.m., standard time at the address of the Surety as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail to the other party with a copy (plainly indicating that the original notice was sent by certified mail) to the FMC at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said written advice by the FMC; provided, however, that with respect to any of the Principal's vessels which are carrying Outer Continental Shelf-produced oil as cargo that has been loaded prior to the time such termination would otherwise have become effective, such termination shall not become effective (1) until completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the FMC of notice of termination of the bond by the Principal or the Surety under the conditions set forth above, whichever date is earlier. The Surety shall not be liable hereunder in connection with an incident occurring after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety in connection with an incident occurring prior to the date such termination becomes effective.

The Surety designates _____ (Name of Agent) _____ with offices at _____

as the Surety's agent for service of process for the purposes of Title III of the Act and for the purposes of the regulations of the FMC (Part 544 of Title 46, Code of Federal Regulations). If the designated agent cannot be served due to death, disability, or unavailability, the Secretary of the FMC shall be deemed to be the agent for service of process.

The definitions in 46 CFR 544.2 shall apply to this bond.

In witness whereof, the Principal and Surety have executed this instrument on the _____ day of _____, 19____.

(Please type name of signer under each signature. In the case of a partnership, each partner must sign.)

PRINCIPAL

(Individual Principal or Partner)

(Business Address)

(Individual Principal or Partner)

(Business Address)

(Individual Principal or Partner)

(Business Address)

Corporate Principal

Business Address

By (Affix Corporate Seal)

Title

SURETY

Corporate Surety

Business Address

By (Affix Corporate Seal)

Title
Surety Co. Bond No. _____
Form FMC-194
FEDERAL MARITIME COMMISSION

GUARANTY FORM FMC-195 IN RESPECT OF LIABILITY FOR DISCHARGE OF OIL UNDER TITLE III OF THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978 (PUB. L. 95-372)

1. WHEREAS
(Name of Vessel Operator)

(hereinafter referred to as the "Operator") is the Operator of the Vessel(s) specified in the annexed schedules (hereinafter "Vessel" or "Vessels"), and whereas the Operator desires to establish its financial responsibility in accordance with section 305(a)(1) of the Outer Continental Shelf Lands Act Amendments of 1978 (hereinafter referred to as "the Act"), the undersigned Guarantor hereby guarantees, subject to the provisions of clause 4 hereof, to discharge the Operator's legal liability for damages and removal costs under Title III of the Act, in the event that such legal liability has not been discharged by the Operator within 21 days after the claimant has obtained a final judgment (after appeal, if any) against the Operator, in accordance with Title III of the Act, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Operator, with the approval of the Guarantor. Upon payment of the agreed sum, the Operator is to be fully, irrevocably and unconditionally discharged from all further liability to the claimant under this Guaranty with respect to such claim. The Operator's legal liability under Title III of the Act, which is covered by this Guaranty, is \$300 per gross ton or \$250,000, whichever is greater.

2. The Guarantor's liability per vessel in any one incident, under this Guaranty, shall in no event exceed \$300 per gross ton or \$250,000, whichever is greater, provided that the Guarantor furnishes prompt written notice to the Federal Maritime Commission (FMC) of all claims filed, judgments rendered and payments made by the Guarantor under this Guaranty.

3. The Guarantor's liability under this Guaranty shall attach only in relation to incidents giving rise to claims, authorized under section 303 of the Act, against the Operator in respect of any of the Vessels for removal costs and damages, occurring on or after the effective date of this Guaranty and before the termination date of this Guaranty. The effective date, as to each of such Vessels, shall be the date such Vessel is named in Schedule A or added to Schedule B below. The termination date, as to each of such Vessels, shall be the date 30 days after the date of receipt by the FMC of notice in writing that the Guarantor has elected to terminate this Guaranty, *provided, however*, that with respect to any Vessel which is carrying Outer Continental Shelf-produced oil as cargo that has been loaded prior to the scheduled date of termination, such termination shall not become effective (1) until completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the FMC of such notice of termination, whichever date is earlier. Termination of this Guaranty as to any of such Vessels shall not affect the liability of the Guarantor in connection with an incident occurring prior to the date such termination becomes effective.

4. Any claim against the Operator, authorized by section 303 of the Act, may be brought directly against the Guarantor. In the event of such direct claim, the Guarantor shall be entitled to invoke only (1) the rights and defenses permitted by Title III of the Act to the vessel operator and (2) the defense that the incident was caused by the willful misconduct of the Operator.

5. If, during the currency of this Guaranty, the Operator requests that a vessel operated by the Operator, and not specified in the annexed Schedules A and B, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies the FMC in writing, then such vessel shall thereupon be deemed to be one of the Vessels included in Schedule B and subject to this Guaranty.

6. The Guarantor hereby designates

(Name of Agent)

with offices at _____

as the Guarantor's agent in the United States for service of process for purposes of Title III of the Act and for purposes of Part 544 of Title 46, Code of Federal Regulations. If the designated agent cannot be served due to death, disability or unavailability, the Secretary of the FMC shall be deemed to be the agent for service of process.

7. If more than one Guarantor joins in executing this Guaranty, such action shall constitute joint and several liability on the part of such guarantors.

8. The definitions in 46 CFR 544 shall apply to this Guaranty.

EFFECTIVE DATE:

(Month/Day/Year and Place of Execution)

(Type Name of Guarantor)

(Type Address of Guarantor)

By: _____

(Signature)

(Type Name and Title of Person Signing Above)

FMC-195 Guaranty No. _____

SCHEDULE A—VESSELS INITIALLY LISTED

Vessels	Gross tons	Operator
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FMC-195 Guaranty No. _____

SCHEDULE B—VESSELS ADDED IN ACCORDANCE WITH CLAUSE 5

Vessels	Gross tons	Operator	Date added
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FMC-195 Guaranty No. _____

[FR Doc. 79-8283 Filed 3-19-79; 8:45 am]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Eighteenth Rev. S.O. No. 1234]

PART 1033—CAR SERVICE

Distribution of Freight Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Eighteenth Revised Service Order No. 1234).

SUMMARY: Because of a severe shortage of high-capacity cars, railroads are unable to furnish all of the large-capacity cars to transport the minimum quantities of freight required to be transported by their tariffs. Supplies of smaller cars are often available except for capacity for transporting the required minimum quantities. Eighteenth Revised Service Order No. 1234 authorizes railroads to furnish sufficient smaller cars to transport the shipments regardless of tariff limitations as to the number of cars that must be tendered or specifying minimum weights per car. Minimum weights per shipment must be maintained. Eighteenth Revised Service Order No. 1234 eliminates the list of commodities and provides for substitu-

tion involving any commodity, with the consent of the carrier and the shipper.

DATES: Effective 11:59 p.m., March 15, 1979. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT:

J. K. Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

Decided: March 14, 1979.

There is an acute shortage of high capacity freight cars for transporting shipments of * numerous commodities, caused by certain tariff provisions specifying the minimum quantities that must be loaded into cars offered to the shippers. At the same time smaller cars, suitable except as to capacity, are available for transporting these products. The inability of the carriers and shippers to utilize the smaller capacity cars in place of the larger cars required by tariff provisions is resulting in great economic loss to both shippers and carriers.

In the opinion of the Commission, an emergency exists requiring immediate action to modify existing rules, regulations and practices with respect to car service to secure maximum utilization of the available supply of freight cars and to alleviate shortages of cars. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered:

§ 1033.1234 Eighteenth Revised Service Order No. 1234.

(a) *Distribution of freight cars.* *Subject to the concurrence of the carrier and the shipper, carriers may substitute a sufficient number of smaller cars of the same car type for larger cars ordered to transport shipments of numerous commodities, regardless of tariff requirements specifying minimum cubic or weight carrying capacity. (See exceptions (b) and (c).)

(b) *Exception.* This order shall not apply to shipments subject to tariff provisions requiring the use of twenty-five or more cars per shipment.

(c) *Exception.* This order shall not apply to shipments subject to tariff provisions which require that cars be furnished by the shipper.

(d) *Rates and Minimum Weights Applicable.* The rates to be applied and the minimum weights applicable to shipments for which cars smaller than those ordered have been furnished

and loaded as authorized by Section (a) of this order shall be the rates and minimum weights applicable to the larger cars ordered.

(e) *Billing to be Endorsed.* The carrier substituting smaller cars for larger cars as authorized by Section (a) of this order shall place the following endorsement on the bill of lading and the waybills authorizing movement of the car:

"Car of (—) cu. ft. and of (—) lbs. or greater capacity ordered. Smaller cars furnished authority Eighteenth Revised ICC Service Order No. 1234".

(f) *Concurrence of Carrier and Shipper Required.* Smaller cars shall not be furnished in lieu of cars of greater capacity without the consent of the carrier and shipper.

(g) *Exceptions.* Exceptions to this order may be authorized to railroads by the Railroad Service Board, Washington, D.C. 20423. Requests for such exception must be submitted in writing, or confirmed in writing, and must clearly state the points at which such exceptions are requested and the reason therefor.

(h) *Rules and Regulations Suspend.* The operation of all rules, regulations, or tariff provisions is suspended insofar as they conflict with the provisions of this order.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(j) *Effective date.* This order shall become effective at 11:59 p.m., March 15, 1979.

(k) *Expiration.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

(49 U.S.C. (10304-10305 and 11121-11126))

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member Joel E. Burns, not participating.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-8364 Filed 3-19-79; 8:45 am]

[7035-01-M]

[Amdt. No. 3 to S.O. No. 1333]

PART 1033—CAR SERVICE

**Illinois Terminal Railroad Company
Authorized To Operate Over
Tracks of Illinois Central Gulf Railroad Company**

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Amendment No. 3 to Service Order No. 1333.

SUMMARY: The Illinois Terminal Railroad Company is unable to operate over its line between Lincoln, Illinois, and Allentown, Illinois, because of damage to a bridge at Mackinaw, Illinois. Service Order No. 1333 authorizes the Illinois Terminal to operate over parallel trackage of the Illinois Central Gulf Railroad Company between Lincoln and Pekin, Illinois, in order to provide continued rail service for shipments routed via its line. The order is published in full in Volume 43 of the FEDERAL REGISTER at page 35317. Amendment No. 3 to Service Order No. 1333 extends the order until modified or vacated by order of this Commission.

DATES: Effective 11:59 p.m., March 15, 1979. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT:

J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

Decided March 12, 1979.

Upon further consideration of Service Order No. 1333 (43 FR 35317, 56902 and 44 FR 3717), and good cause appearing therefor:

It is ordered, that § 1033.1333 ILLINOIS TERMINAL RAILROAD COMPANY AUTHORIZED TO OPERATE OVER TRACKS OF ILLINOIS CENTRAL GULF RAILROAD COMPANY, Service Order No. 1333 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 15, 1979.

(49 U.S.C. (10304-10305 and 11121-11126).)

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement

under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-8296 Filed 3-19-79; 8:45 am]

[7035-01-M]

[Amdt. No. 4, S. O. No. 1352]

PART 1033—CAR SERVICE

Chicago and North Western Transportation Company Authorized to Operate Over Tracks of Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Fond du Lac, Wisconsin

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Amendment No. 4 to Service Order No. 1352.

SUMMARY: The lines of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) serving Fond du Lac, Wisconsin, are inoperable because of heavy snow at this location which is depriving industries located adjacent to the MILW tracks at this location of railroad service. Service Order No. 1352 authorizes the Chicago and North Western Transportation Company (CNW) to operate over tracks of the MILW in Fond du Lac, Wisconsin, in order to restore railroad service to these shippers. The order is printed in full in Volume 44 of the FEDERAL REGISTER at page 3715. Amendment No. 4 extends the expiration date of the order until April 15, 1979.

DATES: Effective 11:59 p.m., March 15, 1979. Expires 11:59 p.m., April 15, 1979.

FOR FURTHER INFORMATION CONTACT:

J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

Decided March 12, 1979.

Upon further consideration of Service Order No. 1352 (44 FR 3715, 4953, 6918 and 10505), and good cause appearing therefor:

It is ordered, that § 1033.1352 CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY AUTHORIZED TO OPERATE OVER TRACKS OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY AT FOND DU LAC, WISCONSIN, Service Order No. 1352 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., April 15, 1979, unless otherwise modified, changed or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 15, 1979.

(49 U.S.C. (10304-10305 and 11121-11126).)

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Secretary,

[FR Doc. 79-8297 Filed 3-19-79; 8:45 am]

[7035-01-M]

SUBCHAPTER C—ACCOUNTS, REPORTS, AND RECORDS

[No. 37082]

PART 1241—ANNUAL, SPECIAL OR PERIODIC REPORTS; CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

PART 1249—REPORTS OF MOTOR CARRIERS

PART 1251—REPORTS OF FREIGHT FORWARDERS

Reporting Contributions to Employee Stock Ownership Plans

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission has decided to require Class I and Class II railroads, Class I and Class II motor carriers of property, Class I motor carriers of passengers, and Class A freight forwarders to disclose in their annual reports the amount of additional contributions which they make to employee stock ownership plans as a result of their recognition of investment tax credits on their initial contributions to the plans. These additional contributions are non-recoverable operating expenses, and the Commission needs to have them identified for rate-making analysis purposes.

DATES: Effective for the reporting year beginning January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Bryan Brown, Jr., telephone: (202) 275-6237.

SUPPLEMENTARY INFORMATION: The Internal Revenue Code provides employers with the opportunity to recognize an investment tax credit on a percentage of contributions to qualified Employee Stock Ownership Plans (ESOP). The tax credit is calculated as a percentage of initial contributions to the plans. Once the amount of the tax credit is determined, the employer must make an additional contribution to the plans in an amount equal to the tax credit to be recognized.

The additional contribution related to the recognized tax credit is considered a non-recoverable operating expense in determining a rate base. Accordingly, this expense must be removed from total operating expenses for ratemaking purposes.

The uniform system of accounts (USOA) and annual reports do not make it easy to identify and remove this expense for ratemaking purposes. The USOA requires ESOP contributions to be accumulated in either the

wage and salary expense account or fringe benefit expense account. The primary financial statements, supporting schedules, and notes to the financial statement do not disclose the ESOP contributions or related investment tax credit.

The Commission finds that for good cause shown, notice and public proceedings are unnecessary pursuant to 5 U.S.C. 553(b)(B). All of the carriers affected by this proceeding must already accumulate data on ESOP contributions in order to calculate investment tax credits for income tax purposes. Therefore, the reporting revision is a minor, technical change in regulation that would not impose a significant accounting or reporting burden.

However, in keeping with our belief that any rule can benefit from public scrutiny, we are requesting that the public study the rule and report, within 45 days, any changes which need to be made. If the Commission concludes, after reviewing the comments, that it is necessary to change the revised rule, a further notice will be published in the FEDERAL REGISTER identifying the changes made.

Accordingly, the annual reports described in §§ 1241.11, 1241.12, 1249.1, 1249.2, 1249.5 and 1251.1 of Title 49 of the Code of Federal Regulations are revised by adding the following two-part footnote:

A. The amount of employer contributions to qualified employee stock ownership plans for the current reporting year was \$—.

B. The amount of investment tax credit used to reduce current income tax expense resulting from contributions to qualified employee stock ownership plans for the current year was \$—.

This Decision does not significantly affect the quality of the human environment.

These rules are issued under the authority of 49 U.S.C. 10321, 11142 and 11145.

Decided: February 27, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-8296 Filed 3-19-79; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 230]

[Release Nos. 33-6034, 34-15621, IC-10621]

GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Investment Company Sales Literature Interpretive Rule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is withdrawing its Statement of Policy on investment company sales literature ("Statement") and requesting public comment on a proposed interpretive rule concerning the use of false and misleading investment company sales literature. The Commission is also adopting a policy whereby: (1) Neither the Commission nor its staff will give detailed interpretive advice on sales literature prior to its use; (2) the staff will undertake a systematic "spot check" of sales literature filed with the Commission and will review sales literature in connection with its inspections of investment companies; and (3) staff advisory views on the content of sales literature will be published in staff interpretive releases from time to time as the need arises. These actions are being taken following a general review of the Statement and of public comments received on the revision and controlled use of the Statement. The Commission believes that these actions will encourage the investment company industry to assume principal responsibility for the development and use of sales literature that is not misleading and limit the extent to which government regulators intrude on investment company marketing decisions.

DATES: Comments should be submitted on or before May 15, 1979.

ADDRESSES: Send comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All communications with respect to this matter

should refer to File No. S7-716. Such communications will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Anthony A. Vertuno (202) 755-1192, or Sarah B. Ackerson (202) 755-1792, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On September 14, 1977, the Securities and Exchange Commission announced that it was undertaking a general review of its Statement of Policy on investment company sales literature ("Statement") in Securities Act Release No. 5864 (September 14, 1977) [42 FR 47563 (September 21, 1977)]. That release invited comment on the specific provisions of the Statement, continued use of the Statement and adoption of rules on the use of investment company sales literature. A number of considerations led the Commission to undertake a general review of the Statement: problems in administering the Statement's provisions; growing sentiment in the investment company industry for an updating and modernization of the Statement; the length of time since the adoption of the Statement; developments in the industry during the interim; the reluctance of the industry to use presentations unless they are included in the Statement; and the prospect of an increasing role for the Commission and its staff in determining the content of sales literature for the industry.

The Statement, which was adopted in 1950, offers guidelines for users of investment company sales literature so that use of material which the Commission considers false and misleading can be avoided. The Statement describes certain types of representations which are considered misleading and includes a number of approved presentations, including certain charts and tables. Since its adoption the only amendments to the Statement have related to charts and tables which illustrate fund performance.

COMMENTS RECEIVED

Pursuant to the Commission's request for comments on the Statement, eleven submissions were received, including an oral presentation before

the Commission made by the Investment Company Institute ("ICI"). The submissions as a whole dealt with two general subjects: The approach the Commission should take in its future regulation of sales literature and how specific provisions of the Statement should be updated.

(a) The Commission's approach to sales literature regulation. The commentators offered several approaches which they thought the Commission should consider in designing the future structure of investment company sales literature regulation. The most significant departure from the existing regulatory scheme suggested was the elimination of the Statement and, perhaps, the several advertising rules as well and the adoption of a simple anti-fraud provision or rule instead. The ICI asked that a Commissioner be appointed to supervise personally the development of an advertising code which would replace all existing advertising rules with a single anti-fraud rule incorporating a revised Statement, charts and tables, and procedures for periodic updating and modifications. A somewhat less sweeping proposal involved replacing the Statement with a rule which would contain broad, overall principles governing sales literature with specific guidelines (but no sample illustrations) for charts and tables. Other commentators, either expressly or implicitly, supported the concept of a Statement as opposed to a rule or a simple anti-fraud provision but recommended the establishment of a schedule for regular updates. One commentator suggested that the Statement should be updated before or concurrently with the adoption of any revised advertising rules.

Only three of the respondents considered the possibility of discarding the Statement or substantially changing the way in which the Commission regulates sales literature. Even their comments can be read as endorsing the Commission's continuing close regulation albeit in a more flexible and less detailed manner.

(b) Revision of the Statement. All commentators submitted suggestions concerning revision of the Statement. In general terms, the most prevalent comment was that the provisions of the Statement are out of date because they are oriented toward equity funds and do not consider the different characteristics of the many non-equity

funds that exist today. Sample charts and tables were criticized as being too technical and containing too much information for the average investor to understand. The Statement and its administration were attacked as inhibiting use by the industry of more helpful and understandable presentations.

More specifically, the comments can be divided into those involving charts and tables and those involving all other provisions of the Statement. Considering the latter comments first, the computation of yields approved by the Statement was severely criticized as not being suitable for many of the funds that invest primarily in debt securities and particularly those in which investor turnover is high. The provisions of the Statement concerning comparisons were held to be too restrictive. A number of sections were criticized for requiring certain boilerplate language which informs investors that an investment in an investment company entails some degree of risk. It was argued that such language, which may not always convey the intended warning, should be vastly simplified and made to suit both fund circumstances and the audience to which a sales piece is directed. Allegations also were made that certain other provisions of the Statement were either no longer meaningful or, in some instances, incorrect.

The most important subject for the majority of the commentators was performance illustrations.¹ Apart from the general comment that sample charts and tables, especially the total return charts, are too complicated and contain too much data, commentators suggested that redundant data contained in charts and tables be eliminated and that the content of certain core charts be made sufficiently flexible to appeal to a variety of investor groups. In addition, it was suggested that after-tax rate of return information be included on certain charts and that "appropriate" illustrations for variable annuities be developed to replace those currently contained in the Statement.

THE COMMISSION'S POSITION

The Commission has concluded that substantial changes in the regulation of investment company sales literature are in order based on its reexamination of the Statement, including consideration of comments received and the staff's experience in recent attempts to update performance illustrations. To implement those changes the

¹Comments submitted in connection with the Commission's most recent amendment of the Statement involving only certain aspects of performance illustrations (Securities Act Release No. 5899 (January 18, 1978) (43 FR 3350) (January 25, 1978)) contained numerous comments on the most recently adopted charts.

Commission is: (1) Withdrawing the Statement; (2) considering revised procedures for sales literature review; and (3) proposing an interpretive rule concerning mutual fund sales literature.

WITHDRAWAL OF THE STATEMENT

The Statement was intended merely to provide some guidance to the public about what the Commission and the staff thought might be misleading in investment company sales literature. It explicitly neither prescribes the content of sales literature nor proscribes presentations which are not covered by the Statement provided that they are not misleading. Nevertheless, in practice the Statement has taken on the character of a comprehensive and mandatory rule. Investment companies have tended to restrict sales literature to formats explicitly approved in the Statement or, if they wished to deviate from those formats, to seek prior staff approval. Investment companies and their representatives have criticized the Statement and sought to have it amended. For its part, the staff has experienced significant burdens in administering the Statement. These developments have had unintended and adverse consequences. On the one hand, the Statement has operated to limit the flexibility of investment companies in advertising. Yet, at the same time, some may have been led to believe that use of a format which is included in the Statement or the failure of the staff to object to a particular representation created a "safe harbor."

The Commission does not believe that the problems with the Statement can be resolved by further attempts to amend it. What is or is not misleading in sales literature may depend greatly on the totality of the circumstances, including the context in which it is used and the sophistication of the investor. The Commission doubts the feasibility of developing mechanical or technical guidelines to define what is or is not misleading in sales literature in all circumstances. Rather the Commission believes that the fundamental responsibility for protecting investors from misleading sales literature resides with those who prepare and use it.² This approach is consistent with the objectives of the Investment Company Act Study. Accordingly, the Commission is withdrawing the Statement as an official expression of its views.

However, the Commission does not want withdrawal of the Statement construed as a repudiation of its contents because many of the Statement's

²Of course, the Commission and its staff have affirmative obligations in connection with the content of prospectuses and tombstones ads, which are included in the definition of sales literature.

principles appear valid in light of the Commission's regulatory experience. Withdrawing the Statement is intended to (1) emphasize that the Statement does not have the status of a restrictive rule; (2) establish the Statement as a historical expression of views but relieve the Commission of any obligation to update or correct technical flaws in its provisions; (3) stress that investment companies and users of sales literature cannot rely on mechanical application of the Statement's provisions but must decide on their own whether sales literature is in fact misleading.

STAFF PROCEDURES

The staff will, however, continue to monitor sales literature on a regular basis by systematically spot checking the required filings made with the Commission but normally will not give interpretive opinions on the appropriateness of sales literature prior to its use.³ Moreover, greater emphasis will be placed on reviewing sales literature during investment company inspections than has been the case in the past. The review of promotional material during a comprehensive examination of fund operations should enable the staff to consider all the circumstances which existed when the sales literature was developed and thereby assist in assessing the propriety of selling representations made to the public. In addition, the staff will continue to follow up on specific problems in sales literature use which are discovered during the review of filings and the inspection program or which are brought to the staff's attention by NASD referrals, investor complaints and the industry. When a matter does arise which is of particular regulatory significance the staff intends to issue an interpretive release to advise the industry of staff views and concerns.

PROPOSED INTERPRETIVE RULE

In an effort to provide some guidance to persons who wish to determine whether sales literature is misleading, the Commission is proposing for public comment an interpretive rule concerning investment company sales literature.⁴ In light of the history of

³This policy reaffirms the Commission's position as announced in Securities Act Release No. 5661 (December 30, 1975) and reverses the policy announced in Securities Act Release No. 5862 (September 1, 1977) (42 FR 47563 (September 9, 1977)) inviting requests for staff interpretive views relating to certain presentations of investment company performance.

⁴An interpretive rule is an "expression of the agency's view of what another rule, regulation or statute means." *Pacific Gas & Elec. Co. v. Federal Power Commission*, 506 F.2d 33, 37 n.14 (C.A.D.C., 1974). Such rules "constitute a body of experience and informed judgment to which the courts and

Footnotes continued on next page

regulation of this subject matter, it seems appropriate to try to give some indication of what the problem areas are based on the Commission's experience. It must be emphasized, however, that the proposed rule is not a legislative rule, that is, one which is "designed to implement * * * or prescribe law or policy."⁵ Although subsection (a) of the rule does include a general prohibition against the use of misleading sales literature, that prohibition merely reiterates pertinent statutory provisions and does not supplement or alter any existing applicable legal standards. Subsection (b) of the proposed interpretive rule addresses particular problem areas but is deliberately couched in general language so that it cannot be construed as prohibiting or permitting any particular representations or presentations. The rule merely highlights general areas which our experience suggests may be the most vulnerable to misleading statements. If the proposed rule is adopted, these general warnings may be supplemented from time to time with staff interpretive releases. Subsection (c) of the proposed rule defines sales literature for purposes of the rule. The definition is similar to that contained in the Statement in most respects, but there are two changes which warrant comment. The exception for material transmitted to dealers but not delivered to investors has been narrowed so that if the substance of the material transmitted is likely to be communicated to investors, the exception would not apply. In addition, the exclusion for reports of issuers not containing an express offer of sales appears unnecessary and has been deleted.

TEXT OF PROPOSED RULE

It is proposed to amend Part 230 of Chapter II of Title 17 of the Code of Federal Regulations by adding (Rule 156 § 230.156) as follows:

Footnotes continued from last page
litigants may properly resort for guidance," *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). The Administrative Procedure Act (5 U.S.C. 500-576) does not require public comment on an interpretive rule, but the Commission deems it advisable to have the views of interested persons on this matter.

⁵Administrative Procedure Act, § 551(4) (5 U.S.C. 551(4)). A legislative rule has been defined as the "product of an exercise of legislative power by an administrative agency, pursuant to a grant of legislative power by the legislative body." (Davis, *Administrative Law Treatise*, § 5.03, p. 299 (1958)). As to the difference between legislative and interpretive rules, see *Joseph v. U.S. Civil Service Commission*, 554 F.2d 1140, 1143 (C.A.D.C., 1977): The relevant distinction between legislative and interpretive or any other non-legislative rules is not the nature of the questions they address but the authority and intent with which they are issued and the resulting effect on the power of a court to depart from the decision embodied in the rule.

§ 230.156 Investment company sales literature.

(a) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, to use sales literature which is materially misleading in connection with the offer or sale of securities issued by an investment company. Sales literature is materially misleading if it (1) contains an untrue statement of a material fact or (2) omits to state a material fact necessary in order to make a statement made, in the light of the circumstances of its use, not misleading.

(b) Whether or not a particular description, representation, illustration, or other statement involving a material fact is misleading depends on evaluation of the context in which it is made. In considering whether a particular statement involving a material fact is or might be misleading, weight should be given to all pertinent factors, including, but not limited to, those listed below:

(1) A statement could be misleading because of:

(i) Other statements being made in connection with the offer of sale or sale of the securities in question;

(ii) The absence of explanations, qualifications, limitations or other statements necessary or appropriate to make such statement not misleading; and

(iii) General economic or financial conditions or circumstances.

(2) Representations about past or future investment performance could be misleading because of statements or omissions made involving a material fact, including situations where:

(i) Portrayals of past income, gain, or growth of assets which tend to convey an impression of the net investment results achieved by an actual or hypothetical investment would not be justified under the circumstances; and

(ii) Representations, whether express or implied, about future investment performance, including: (A) Representations as to security of capital, possible future gains or income, or expenses associated with an investment; (B) representations implying that future gain or income may be inferred from or predicted based on past investment performance; or (C) portrayals of past performance, are made in a manner which would imply that gains or income realized in the past would be repeated in the future.

(3) A statement involving a material fact about the characteristics or attributes of an investment company could be misleading because of:

(i) Statements about possible benefits connected with or resulting from services to be provided or methods of

operation which do not give equal prominence to discussion of any risks or limitations associated therewith;

(ii) Exaggerated or unsubstantiated claims about management skill or techniques, characteristics of the investment company or an investment in securities issued by such company, services, security of investment or funds, effects of government supervision, or other attributes; and

(iii) Unwarranted or incompletely explained comparisons to other investment vehicles or to indexes.

(c) For purposes of this section, the term "sales literature" shall be deemed to include any communication (whether in writing, by radio, or by television) used by any person to offer to sell or induce the sale of shares of any investment company. Communications between issuers, underwriters and dealers are included in this definition of sales literature if such communications, or the information contained therein, can be reasonably expected to be communicated to prospective investors or are designed to be employed in either written or oral form in the sale of securities.

AUTHORITY: The Commission proposes Rule 156 for comment pursuant to the provisions of Section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 80a(a)), and Section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), and Sections 10(b) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b) and 78w(a)).

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 8, 1979.

[FR Doc. 79-8374 Filed 3-19-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 280]

[Docket No. RM79-21]

REGULATIONS UNDER THE NATURAL GAS POLICY ACT OF 1978

Incremental Pricing; Notice of Informal Public Conference and Inquiry

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Public Conference.

SUMMARY: Commissioner George R. Hall will convene an informal public conference to discuss issues regarding the alternative fuel cost ceiling on incremental pricing under the Natural Gas Policy Act of 1978. Additionally, members of the Commission's staff will meet informally with representatives from the National Association of Regulatory Utility Commissions re-

garding the ceiling on incremental pricing.

DATES: The public conference will be held at 10:00 a.m., April 2, 1979; and 2:00 p.m., April 4, 1979. Written comments are due on or before April 2, 1979.

ADDRESSES: The public conference will be held in Hearing Room A, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426. Send comments to the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol Street, N.E., Washington, D.C. 20426 (Reference Docket No. RM79-21, Regulations Implementing the Alternative Fuel Cost Ceiling on Incremental Pricing Under the Natural Gas Policy Act of 1978).

FOR FURTHER INFORMATION CONTACT:

Norman Pedersen, Office of Commissioner George R. Hall, 825 N. Capitol Street, N.E., Washington, D.C. 20426, Phone: (202) 275-4147.

James C. Liles, 825 N. Capitol Street, N.E., Washington, D.C. 20426, Phone: (202) 275-4121.

SUPPLEMENTARY INFORMATION:

On April 2, 1979, Commissioner George R. Hall will convene an informal public conference to discuss implementation of the alternative fuel cost ceiling on incremental pricing under the Natural Gas Policy Act of 1978 (NGPA). The conference will begin at 10:00 a.m., Monday, April 2, 1979 in Hearing Room A at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C.

Additionally, at 2:00 p.m., Wednesday, April 4, 1979, members of the Commission's staff will meet informally with representatives from the National Association of Regulatory Utility Commissioners on issues regarding the ceiling on incremental pricing. The meeting will be held in Hearing Room A, and the public is invited to observe the proceeding.

Proposals for regulations prescribing the basic incremental pricing surcharge mechanism are being developed by the staff and are being discussed with the public in Docket No. RM79-14.¹ Regulations prescribing how the alternative fuel cost ceiling shall be determined are also being developed and are being discussed with the public in this docket, Docket No. RM79-21.

¹ See: *Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978*, Docket No. RM79-14, "Notice of Informal Public Conference and Inquiry," January 12, 1979. The informal conference originally convened February 12, 1979 in Docket No. RM79-14 will be convened on April 3, 1979 by separate notice.

Section 204 of Title II of the NGPA provides for the ceiling on incremental pricing: surcharges imposed under authority of Title II may not increase the price of gas charged to an incrementally priced end-user above the appropriate alternative fuel cost. Section 204 further specifies that the appropriate alternative fuel cost is the price paid by industrial users for No. 2 fuel oil in the region in which the non-exempt end-user is located. The Commission, however, may reduce the ceiling on incremental pricing from the cost of No. 2 fuel oil to the cost of No. 6. It may do so upon reaching a finding that the ceiling must be reduced in order to prevent incremental pricing from raising gas prices to the point where industrial users switch from gas to oil, thereby shifting capital costs to high-priority users. As stated in the conference report:²

The determination is to be based upon a finding that the use of the lower Btu equivalency level is necessary to avoid load shifting that would otherwise result from conversion of incrementally priced industrial facilities to substitute fuels, if that shifting would, in turn, result in increased natural gas rates to high-priority users, including residential and small commercial users.

The conferees urged the Commission to act expeditiously in determining whether the ceiling should be reduced.

The conferees urge the Commission to take whatever action it deems appropriate or necessary to avoid any delays in reducing the substitute fuel level so as to avoid the likelihood of conversions from natural gas by industrial users if those conversions would result in increases in natural gas rates for any residential, small commercial, and other high-priority customers. The conferees intend that in determining the likelihood of these conversions occurring, the Commission move rapidly in the administrative hearings so as to avoid the irreparable damage which the conferees believe will occur to high-priority users if these other industrial users, faced with uncertain natural gas rates, begin taking steps to secure alternate fuel supplies.

There are a number of issues regarding the alternative fuel cost ceiling on incremental pricing which Commissioner Hall specifically invites participants to address at the April 2, 1979, conference. They are the following:

ISSUE NO. 1: NO. 2 OR NO. 6

Should the alternative fuel cost ceiling be based on the cost of No. 2 fuel oil, the cost of No. 6 fuel oil or something in between?

Participants at the April 2, 1979 conference are invited to comment on whether, on the basis of data in their possession and their experience, it will be necessary for the Commission to base the alternative fuel cost ceiling on the cost of No. 6 fuel oil in order to

² S. Rep. No. 95-1752, 95th Cong., 2nd Sess. 100 (1978).

prevent incremental pricing from causing the conversion of incrementally priced industrial facilities to oil.

ISSUE NO. 2: REGIONS

What should be the regions for which alternative fuel cost ceilings should be determined?

The conference report made clear that the Commission has discretionary authority to determine the regions for which the alternative fuel cost ceilings shall be prescribed.³

The cost of substitute fuel oils is to be determined by the Commission on a regional basis. The conference agreement provides the Commission discretion to select as a "region" any geographic or economic unit it deems appropriate. Thus, the region could be several States, a part of a State, or even an area with particular geographic or air quality characteristics which affect the type of fuel used by industrial facilities.

The staff has under consideration several alternatives:

- There could be one nationwide region.

- There could be multi-state regions. There are a variety of established multi-state regions which could be used: DOE Regions, Bureau of Mines Refining Regions, Petroleum Allocation Districts and Census Regions are some examples.

- Each state could be a region.

- States could be the regions at the outset of the incremental pricing program, with subsequent case-by-case division of very large states into subregions and aggregation of small states into multi-state regions as may prove to be necessary.

- Standard metropolitan statistical areas could be regions, though they would have to be supplemented since SMSA's do not encompass the entire geographic area of the nation.

Parties are invited to express their view on the advantages and disadvantages of these options, as well as to bring to the Commission staff's attention any other options which parties believe to be reasonable and to have merit.

The Energy Information Administration has been asked to estimate the cost, both to the government and to respondents, of several of the options the Commission may consider in determining what the regions should be. EIA's estimates may be found in Appendix A.

ISSUE NO. 3: WHOLESALE OR RETAIL PRICE⁴

Should the ceiling be based on the wholesale price of fuel oil or the retail price?

³ S. Rep. No. 95-1752, 95th Cong., 2nd Sess. 99 (1978).

⁴ In this Notice, "retail price" means the price charged to any end-user. "Wholesale" Footnotes continued on next page

Generally, wholesale sales are the sales made by refineries. According to EIA, there are 125 refineries to be sampled, and only 75 of those refine No. 6 fuel oil. Retail sales, on the other hand, are made both by refineries and by local fuel oil dealers. There are 8,000 No. 2 fuel oil dealers, but, according to EIA, there are only approximately 400 No. 6 fuel oil dealers. Thus, if No. 6 data were to be collected, only 400 dealers and 75 refiners would be burdened. Appendix A reflects the difference in administrative cost between collecting data from refiners and collecting data from No. 6 fuel oil dealers.

ISSUE NO. 4: BEFORE-TAX OR AFTER-TAX

Should the alternative fuel cost ceiling be based on the price quoted for fuel oil before state and local taxes are included, or should the ceiling be based on the price after state and local taxes are included?

Using before-tax data would be consistent with the various proposals made in Docket No. RM79-14⁵ to measure the maximum surcharge absorption capability on the basis of the before-tax rate for gas.

ISSUE NO. 5: AVERAGING

What should be the length of the period for which weighted averages should be taken in deriving alternative fuel cost ceilings from oil price data?

The Commission's staff is considering periods ranging from one month to six months. Conference participants are invited to comment on the length of the period for which a weighted average should be taken and to explain the rationale behind whatever option they favor.

ISSUE NO. 6: ADJUSTMENT FACTOR

Should there be a downward adjustment of the average cost of oil? If so, what should be the factor by which there will be a downward adjustment?

A ceiling based on average cost implies that some user will pay more than the ceiling and some users less. Is this acceptable or should there be an

adjustment to reflect this statistical fact?

One option is not to have an adjustment factor. Another option is to adjust the weighted average cost of fuel oil downward by some arbitrary fixed percentage. A third option is to adjust the weighted average downward by one or more standard deviations from the mean. In this latter case, whether it is statistically possible to adjust by more than one standard deviation from the mean will depend upon sample size. If one standard deviation is used, approximately 16 percent of the observations will be in the lower "tail", i.e., below the resulting ceiling price, assuming an approximately normal distribution. If two standard deviations are used, approximately 2.5 percent of the observations will be in the lower tail. If three standard deviations are used, approximately .5 percent of the observations would be in the tail.

ISSUE NO. 7: FREQUENCY OF COLLECTION

How often should data on fuel oil prices be collected?

A variety of possibilities are being considered for how frequently data should be collected:

- Monthly;
- Bimonthly;
- Quarterly;
- Tri-annually;
- Semi-annually.

ISSUE NO. 8: FREQUENCY OF PUBLICATION

How frequently should the ceiling be published?

It would seem sensible to publish the ceiling at least as frequently as it is collected. It does not follow, however, that if collection of data is less frequent than monthly, publication must also be less frequent. For example, data could be collected on a quarterly basis. Fuel cost could then be projected over the next three months, and each month the Commission could publish an adjusted ceiling. Update of the ceiling of the basis of new data, of course, would occur in this example only every three months.

Parities are invited to comment not only on the issues which have just been set out above, and they are also urged to raise any other issues which they believe should be considered regarding the alternative fuel cost ceiling. Conference participants are urged

to make their recommendations as specific and as detailed as possible.

This Notice should not be interpreted as implying any decision or even disposition on the part of the Commission with respect to how Title II should be implemented. This informal opportunity for comment is intended to supplement but not to supplant the opportunity for comment which will be provided when the Commission issues a Notice of Proposed Rulemaking regarding the alternative fuel cost ceiling. A series of regional hearings will then be convened to permit public comment on the matter contained in the Notice of Proposed Rulemaking.

Interested persons and groups are invited to participate in the April 2, 1979 informal conference by making oral presentations, by submitting written comments, or both. Persons wishing to make oral presentations at the conference should notify the Secretary of the Commission in writing on or before March 27, 1979 and should indicate the amount of time desired. A schedule of presentations will be available on March 30, 1979. Time for individual oral presentations will be limited, so group presentations are encouraged.

Written comments should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any comments received will be included in the Docket RM79-21 public reading file in the Commission's Office of Public Information. Parties who intend to make oral presentations at the April 2, 1979 conference are urged to bring copies of any written comments they have for distribution to the conference participants.

In response to a number of requests, the Secretary is establishing a mailing list for both this Docket and Docket No. RM79-14. All those who submitted written comments in Docket No. RM79-14 are on the mailing list in the Docket. All parties who submit written comments by April 2, 1979 will have their names included on the mailing list in this docket.

Anyone who does not submit comments but who wishes to be on the mailing list should send a request for inclusion on the mailing list to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

Footnotes continued from last page
price" means the price charged for oil sold for resale.

⁵ See: Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978, Docket RM79-14, Notice of Informal Public Conference and Inquiry issued January 12, 1979.

[6450-01-C]

APPENDIX ANO. 6 OIL

VARIABLE COST

(Cost per Form/Run - - \$x1,000)

					KEY
					Cost to Government
	NATION	DoE REGION	STATE	SMSA	Cost to Respondents
REFINER	0.5	40.0	40.0	40.0	
Universe : 75	0.0	5.0	5.0	20.0	
DEALER		44.5	50.0	50.0	
Universe : 400		52.8	96.5	125.0	

FIXED COST

(Cost to Government of Implementation)

(\$ x 1,000)

	NATION	DoE REGION	STATE	SMSA
REFINER	4	275	300	325
DEALER		338	384	409

[FR Doc. 79-8425 Filed 3-19-79; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Customs Service

[31 CFR Part 1]

PRIVACY ACT OF 1974

Proposed Notice of Rules Exempting a System of Records from Certain Requirements

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the United States Customs Service hereby gives notice of proposed rulemaking exempting the system entitled "Automated Index to Central Enforcement Files" in accordance with sections (j) and (k) of the Privacy Act of 1974. The system is proposed to be exempted to maintain confidentiality of data obtained from various sources which are investigative in nature and are used for law enforcement purposes.

DATE: Comments must be received on or before April 19, 1979.

ADDRESS: Send comments to Linda Hartford, Entry Procedures and Penalties Division, United States Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Linda Hartford (202-566-8681).

DRAFTING INFORMATION: The principal author of this document was Linda Hartford, Entry Procedures and Penalties Division, Office of Regulations and Rulings, United States Customs Service. However, personnel from other offices of the Customs Service participated in its development, both on matter of substance and of style.

SUPPLEMENTARY INFORMATION: The provisions of the Privacy Act of 1974 from which exemptions are

claimed under 5 U.S.C. 552a(j)(2) are as follows:

- 5 U.S.C. 552a(c) (3) and (4)
- 5 U.S.C. 552a(d) (1), (2), (3), (4)
- 5 U.S.C. 552a(e) (1) (2) and (3)
- 5 U.S.C. 552a(e) (4) (G), (H), and (I)
- 5 U.S.C. 552a(e) (5) and (8)
- 5 U.S.C. 552a(f)
- 5 U.S.C. 552a(g)

The Provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(k)(2) are as follows:

- 5 U.S.C. 552a(c)(3)
- 5 U.S.C. 552a(d) (1), (2), (3), and (4)
- 5 U.S.C. 552a(e)(1)
- 5 U.S.C. 552a(e)(4) (G), (H), and (I)
- 5 U.S.C. 552a(f)

In accordance with the above, it is proposed to amend 31 CFR 1.36 United States Customs Service, Notice of Exempt Systems by adding "Automated Index to Central Enforcement Files" to the listing under a.1 following "Aircraft Registers" and under b.1 following "Attorney Case File."

Dated: March 9, 1979.

W. J. McDONALD,
Acting Assistant Secretary
(Administration).

Section 1.36 is amended by adding "Automated Index to Central Enforcement Files" alphabetically to the lists in paragraph a.1 and b.1 under the center heading United States Customs Service.

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

UNITED STATES CUSTOMS SERVICE
NOTICE OF EXEMPT SYSTEMS

a. General exemptions under 5 U.S.C. 552a(j)(2). ***

1. Exempt Systems. ***
Automated Index to Central Enforcement Files.

b. General exemptions under 5 U.S.C. 552a(j)(2). ***

1. Exempt Systems. ***
Automated Index to Central Enforcement Files.

[FR Doc. 79-8306 Filed 3-19-79; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-15-M]

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

INTENT TO PREPARE DRAFT ENVIRONMENTAL IMPACT STATEMENT

Notice is hereby given that the Rural Electrification Administration (REA) intends to prepare a Draft Environmental Impact Statement (EIS) in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 in connection with an anticipated request for a loan guarantee commitment from Allied Power Cooperative of Iowa (Allied), 1390 Financial Center, Des Moines, Iowa 50309, to provide certain generation and related transmission facilities.

The proposed generating facility will consist of one 600 MW coal-fired generating unit to be constructed on a site ultimately capable of supporting a maximum of 1,200 MW of generating capacity. Associated with the proposed generating station will be coal handling and bulk transmission facilities. Specific sources of coal to supply the proposed generating station have not been identified to date. Likewise, specific transmission facilities and line routings have not been identified as of this writing. Allied anticipates that the first 600 MW of generating capacity will be needed in 1986 to meet the projected load growth of its members' systems.

The entire State of Iowa was examined to determine a suitable location for the proposed generation facility. Allied has identified a location in the vicinity of Mondamin, Harrison County, Iowa, as their preferred site. Other potentially suitable sites include locations near Pacific Junction, Mills County, Iowa, and Benton, Fremont County, Iowa.

A scoping meeting was conducted on November 29, 1978, to discuss siting issues related to Allied's proposed project. Various Federal, state, and local agencies, including REA, were represented. Significant issues identified during this meeting include the potential effects of the proposed project on ground water, fish and wildlife resources, wetlands, and floodplains. REA has been tentatively identified as the lead agency for the purpose of preparing a Federal Draft EIS. All rea-

sonable alternatives will be addressed in this effort.

REA intends to hold public information meetings designed to gain input from the general public on pertinent issues related to Allied's proposed project. A separate Federal Register Notice will be forthcoming, announcing further details.

Interested persons are invited to submit comments which may be helpful in preparing the Draft EIS.

Comments should be forwarded to the Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, with a copy to Allied Power Cooperative of Iowa, whose address was given above. Additional information may be obtained at Allied Power Cooperative of Iowa's office during regular business hours.

REA financing assistance to Allied will be subject to, and release of funds thereunder will be contingent upon, REA's reaching satisfactory conclusions with respect to environmental effects and final action will be taken only after compliance with Environmental Statement procedures required by the National Environmental Policy Act of 1969.

Dated at Washington, D.C., this 12 day of March, 1979.

ROBERT W. FERAGEN,
Administrator.

[FR Doc. 79-8293 Filed 3-19-79; 8:45 am]

[3510-25-M]

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 142]

AUTHORIZATION TO CONDUCT GOLD PROC- ESSING OPERATIONS IN U.S. FOREIGN- TRADE ZONES

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

WHEREAS, Foreign-Trade Zones Board Order No. 4, dated October 21, 1937 (2 FR 2784), imposed restrictions relative to the handling of gold and silver in U.S. foreign-trade zones;

WHEREAS, Board Order No. 4 was amended on February 6, 1939 (4 FR

541), to remove the restriction on silver operations in zones, retaining the restriction on gold; and

WHEREAS, Pub. L. 93-373 (effective December 31, 1974) removed all restrictions on the importation, processing, or private ownership of gold;

NOW, THEREFORE, the Board hereby orders:

Foreign-Trade Zones Board Order No. 4, as amended on February 6, 1939, is rescinded, as of this date.

Signed at Washington, D.C. this 12th day of March 1979.

FOREIGN-TRADE ZONES
BOARD,

JUANITA M. KREPS,

Chairman and Executive Officer.

Attest:

JOHN J. DAPONTE,
Executive Secretary.

[FR Doc. 79-8280 Filed 3-19-79; 8:45 am]

[3510-25-M]

Industry and Trade Administration

RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL CENTER

Consolidated Decision on Applications for
Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially Section 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number 79-00108. Applicant: Rush-Presbyterian-St. Luke's Medical Center, 1753 West Congress Parkway, Chicago, Illinois 60612. Article: Electron Microscope, Model JEM 100CX and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used by students from the following three formal courses and also independent thesis research as an integral part of the educational program:

CE BIO 512—Scientific Basis of Electron Microscopy
 CE BIO 522—Electron Microscopy Laboratory
 CE BIO 531—Stereology
 CE BIO 699—Independent Thesis Research

Application received by Commissioner of Customs: January 9, 1979. Article ordered: September 7, 1978.

Docket Number 79-00112. Applicant: University of Virginia, Department of Anatomy, 1300 Jefferson Park Avenue, Box No. 439, Charlottesville, Va. 22908. Article: Electron Microscope, Model JEM-100CX/SEG and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for electron microscopic studies of the following:

(1) Formation of myocardial T-axial tubules and sarcoplasmic reticulum—a thorough study of the development, in mammalian heart, of the two major "membrane systems" of cardiac muscle cells,

(2) Morphology and cytochemistry of N-SR and J-SR—study which will document a number of features of SR, including its morphological variations among different species of mammals, the geometric makeup of couplings, and the types of, and time of development, of various enzymatic activities within the SR,

(3) Determination of the ionic content (Na^+ , K^+ , Cl^- , Ca^{++}) of the tubular systems and various organelles of muscle cells, and

(4) Development of the mature pattern of insulin receptors in cells from normal and diabetic mice.

In addition, the article will be used to train graduate students, post-doctoral fellows, residents, and medical students in the use of an electron microscope. Application received by Commissioner of Customs: January 9, 1979. Article ordered: October 9, 1978.

Docket Number 79-00114. Applicant: The Methodist Hospital, 6516 Bertner, Cullen Eye Institute, Houston, Texas 77030. Article: Electron Microscope, Model JEM-100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used to probe minimal denatured, high resolution molecular details of human and experimental ocular tissue. Specifically, the following will be studied: molecular aspects of minimally denatured photoreceptor membranes; membrane and organelle changes associated with retinitis pigmentosa; retinal abnormalities related to defined human genetic lesions; collagen and mucopolysaccharide abnormalities in human corneal keratoconus; surface changes associated with intraocular lens rejections. Application received by Commissioner of Customs: January 9, 1979. Article ordered: August 15, 1978.

Docket Number 79-00115. Applicant: The Mercy Hospital of Pittsburgh, Pride and Locusts Sts., Pittsburgh, Pennsylvania 15219. Article: Electron Microscope, Model JEM-100S and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for studying the ultrastructural morphology of a variety of biological materials; human tissues obtained by surgical biopsy and autopsy to aid in the diagnosis of various kidney, muscle, and neoplastic diseases. The article will also be used diagnostically in the examination of peripheral blood lymphocytes from leukemic patients. In addition to the diagnostic information provided by ultrastructural examination, analysis should lead to new insights to the nature of some of the less well-studied disorders encountered. The article is also important to specific research projects: (1) ultrastructural high resolution autoradiographic analysis of viral-induced transformation of skeletal muscle cells differentiating *in vitro* (2) ultrastructural analysis (including high-resolution histochemistry and immunocytochemistry) of tumor cell colonies differentiating *in vitro*. In addition to training members of the Pathology Department in ultrastructural techniques, the article will be used to train any physicians in approved residency training programs. Application received by Commissioner of Customs: January 9, 1979. Article ordered: December 6, 1978.

Docket Number 79-00118. Applicant: U.S. Eastern Regional Research Center, 600 East Mermaid Lane, Philadelphia, Pennsylvania 19118. Article: Electron Microscope, Model EM 10B, and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used to carry out ultrastructural investigations involving detailed studies of the morphology of agricultural products and byproducts as related to their physical and biochemical properties. Investigations in progress involve host-pathogen relationships in the potato, changes in ultrastructure of meat tissues as related to thermal and mechanical stress, determination of location of specific proteins and enzymes associated in the lactating cells of bovine mammary tissue using ferritin label antibodies, and location of the polymer graft site in polymerized leathers. Application received by Commissioner of Customs: January 15, 1979. Article ordered: December 26, 1978.

Docket Number 79-00120. Applicant: University of California, Lawrence Berkeley Laboratory, 1 Cyclotron Road, Berkeley, CA 94720. Article: Electron Microscope, Model EM 400 and accessories. Manufacturer: Philips Electronics Instruments NVD, The

Netherlands. Intended use of article: The article is intended to be used for studies of inorganic materials, and to relate these findings to their macroscopic properties. In addition, the article will be used in Materials Science and Engineering courses (Electron Diffraction and Microscopy (MSE 213A), Electron Diffraction and Microscopy Laboratory (MSE 213L), and Advanced Electron Microscopy (MSE 213B)) to familiarize students with the best available techniques in transmission electron microscopy for research in materials Science. Application received by Commissioner of Customs: January 9, 1979. Article ordered: December 8, 1978.

Docket Number 79-00123. Applicant: National Institutes of Health, Bldg. 2, Room 322, 9000 Rockville Pike, Bethesda, Maryland 20014. Article: Electron Microscope, Model EM 400 HMG with Accessories. Manufacturer: Philips Electronics NVD, The Netherlands. Intended use of article: The article is intended to be used for the study of the structures of enzymes and protein-nucleic acid complexes. For the study of such complex molecules, particularly for the detailed study of the mechanism of enzyme action, detailed information on the internal structure of individual proteins, or the interaction between protein and nucleic acid is essential. Application received by Commissioner of Customs: January 15, 1979. Article ordered: September 30, 1978.

Docket Number 79-00126. Applicant: Viral and Rickettsial Disease Laboratory, California State Department of Health Services, 2151 Berkeley Way, Berkeley, CA 94704. Article: Electron Microscope, Model H-500L with accessories. Manufacturer: Hitachi Ltd., Japan. Intended use of article: The article is intended to be used for the identification of viral agents in specimens submitted from public health and medical care agencies to the State Laboratory. It will be used primarily for the identification of those agents which cannot be grown in the laboratory, thus precluding the use of standard methods of culture of identification of viral agents. Some of the important human viruses for which identification has become possible by the application of high resolution immunoelectron microscopy techniques include: (1) the causative viruses of widespread outbreaks of acute nonbacterial gastroenteritis; (2) rotavirus, the causative agent of infantile gastroenteritis; and (3) hepatitis A virus, the agent of common infectious hepatitis. Application received by Commissioner of Customs: January 15, 1979. Article ordered: October 31, 1978.

Docket Number 79-00130. Applicant: University of Massachusetts, Department of Microbiology, Amherst, MA

01003. Article: Electron Microscope, Model JEM 100S and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used in the following ongoing research projects:

(1) Cytochemical analysis of gliding microorganisms of the human oral cavity.

(2) Cytology of the adrenal medulla and its catecholamine secretory vesicles.

(3) Cytological studies of age changes in the surface membrane in the nematode, *Caenorhabditis briggsae*.

(4) Plasma membrane studies in *Dictyostelium discoideum*.

(5) Cytological analysis of the red blood cell membrane as a function of structural transitions induced by scanning calorimetry.

(6) Electron microscopy of RNA-protein interactions.

(7) Studies of the pollen wall of the ranalean complex.

(8) Cytological characterization of cell types from cultured endothelial and smooth muscle cells.

(9) The development of photosynthetic reaction center in the green photosynthetic bacteria.

(10) Migration of spirochetes through mammalian tissues.

(11) Genetics of *Bacillus thuringiensis* and its phages.

(12) Genetic analysis of the interactions between a unique RNA bacteriophage and its bacillus host.

(13) Electron microscopy of African pathogenic protozoa.

(14) Electron microscopy of selected bacterial viruses.

(15) Electron microscopy of genetic material, and

(16) Cytology of the cell envelope of *Pseudomonas cepacia*.

In addition, the article will be used to teach graduate, undergraduate students and faculty the newer techniques in ultrastructural identification of biological material in the course: Microbiol 750. Electron Microscopy. Application received by Commissioner of Customs: January 19, 1979. Article ordered: November 17, 1978.

Docket Number 79-00133. Applicant: George Washington University Medical School, 2300 I Street, NW., Washington, DC 20037. Article: Electron Microscope, Model JEM-100S. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for ultrastructural studies of biological materials, specifically cell membranes of various types. Experiments to be conducted involve the effects of dietary fibers on the gastrointestinal tract at an ultrastructural level and rheological studies of sickle cell anemia. The article will also be used in the course Electron Microscopy in Cell Biology to introduce graduate and/or

medical students to the theory and practical aspects of electron microscopy with particular respect to biological samples. Application received by Commissioner of Customs: January 19, 1979. Article ordered: December 7, 1978.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign article for such purposes as these articles are intended to be used, was being manufactured in the United States at the time the articles were ordered.

Reasons: Each foreign article to which the foregoing applications related is a conventional transmission electron microscope (CTEM). The description of the intended research and/or educational use of each article establishes the fact that a comparable CTEM is pertinent to the purposes for which each is intended to be used. We know of no CTEM which was being manufactured in the United States either at the time of order of each article described above or at the time of receipt of application by the U.S. Customs Service.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which was being manufactured in the United States either at the time of order or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

STANLEY P. KRAMER,
Program Manager, Florence
Agreement Program, Statutory
Import Programs Staff.

[FR Doc. 79-8278 Filed 3-19-79; 8:45 am]

[3510-25-M]

UNIVERSITY OF TEXAS AT AUSTIN

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Con-

stitution Avenue, N.W., Washington, D.C. 20230.

Docket Number 79-00065. Applicant: The University of Texas at Austin, Electrical Engineering Research Laboratory, 10100 Burnet Rd., Austin, TX 78758. Article: Millimeter Reflex Klystrons. Manufacturer: Varian Associates of Canada, Canada. Intended use of article: The article is intended to be used for research purposes in the field of radio astronomy. The phenomena studied are the spectral line emissions of interstellar molecules, the continuum radiation of planets and the emission of atmospheric constituents. In addition, the article will be used in the following courses which all graduate students obtaining a Ph.D. in millimeter wavelength radio astronomy must take:

a. Astronomy 393S—Theoretical Astrophysics—Interstellar Medium.

b. Astronomy 393—Dense Interstellar Matter.

c. Astronomy 391—Graduate Research in Astronomy.

d. Astronomy 399R, 699R, and 999R—Dissertation.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign articles are capable of operating in the frequency range of 104-110 GHz and 132-140 GHz. The National Bureau of Standards advises in its memorandum dated February 27, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

STANLEY P. KRAMER,
Program Manager, Florence
Agreement Program, Statutory
Import Programs Staff.

[FR Doc. 79-8279 Filed 3-19-79; 8:45 am]

[3510-25-M]

APPLICATIONS FOR DUTY FREE ENTRY OF
SCIENTIFIC ARTICLES

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before April 9, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5:00 p.m., Monday through Friday, in Room 6886C of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket number 79-00163. Applicant: U.S. Department of Commerce—National Bureau of Standards, 325 Broadway, Boulder, CO 80303. Article: Microfabrication System, Scanning Electron Microscope/Electron Beam, Type S150-1 and Accessories. Manufacturer: Cambridge Instrument Co., United Kingdom. Intended use of article: The article is intended to be used primarily for research in superconducting electronics, i.e., electronics based on superconducting materials. In addition, the article will be used in the development of linewidth measurement artifacts in the sub-micrometer dimensional regime. Application Received by Commissioner of Customs: February 16, 1979.

Docket number 79-00164. Applicant: National Institutes on Aging, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224. Article: Electron Microscope, Model JEM 100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for examination of cells and tissues in order to discover the common and different changes occurring in a variety of aging cell types and to see if the process can be altered. Application received by Commissioner of Customs: February 23, 1979.

Docket number: 79-00165. Applicant: West Virginia University School of

Medicine, Medical Center Drive, Morgantown, W.Va. 26505. Article: Electron Microscope, Model JEM 100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of Article: The article is intended to be used in ultrastructural studies of adult and developing organ/tissue systems from a variety of mammalian species. The materials to be studied include both normal and experimental tissues from the reproductive system, the respiratory tract, the central and peripheral nervous systems and hemopoietic organs. Experiments will be conducted to correlate microstructure with critical parameters of physiological and biochemical processes which effect the structure and function of biological tissues in both normal and pathological states. Specific aims are directed toward the determination of mechanisms involved in aging, cell secretion and metabolism, and cellular trauma produced by various environmental pollutants. In addition, the article will be used in the following courses to familiarize students with techniques of use and interpretation in electron microscopy and the range of applications for transmission, scanning and scanning transmission electron microscopy: ANAT 312—Introduction of Research, CJ (Conjoined Course) 320—Electron Microscopy, ANAT 497—Dissertation Research. Application received by Commissioner of Customs: February 23, 1979.

Docket number 79-00166. Applicant: University of North Carolina at Chapel Hill, 231H Fac. Lab. Off. Building, University of North Carolina, Chapel Hill, N.C. 27514. Article: Rotating Anode X-Ray Generator complete with accessories. Manufacturer: Rigaku, Japan. Intended use of article: The article is intended to be used to record diffraction data of biochemical specimens and single protein crystals using film and detector methods in an attempt to learn about three dimensional structure of proteins and nucleic acids. Application received by Commissioner of Customs: February 23, 1978.

Docket Number 79-00167. Applicant: Brooke Army Medical Center, Department of Pathology, Fort Sam Houston, San Antonio, TX 78234. Article: Electron Microscope, Model EM 10A and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for studies of surgical and autopsy specimens from human patients. Ultrastructural cellular characteristics of the specimens (kidney biopsies, muscle biopsies, lung tumors, skin tumors, bone marrow biopsies, brain tumors, etc.) will be photographed for study by a physician seeking a diagnosis of the patient's disease. Application received

by Commissioner of Customs: February 23, 1979.

Docket Number 79-00168. Applicant: University of Massachusetts, Amherst, Massachusetts 01003. Article: Electron Microscope, Model JEM 100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used in high resolution studies of plant and animal cells specifically as follows: (i) To describe the patterns and structural connections between microtubules and endoplasmic reticulum in the spindle apparatus; (ii) to reveal the presence and structural disposition of presumptive action filaments in dividing cells; (iii) to decipher the condensation of macromolecular structural components in basal bodies as they emerge during blepharoplast formation; (iv) to observe the degree and type of fusion between leaflets of thylakoid membranes in developing chloroplasts; (v) to reveal the fine granular and lamellar composition of the cell wall in pollen grains following acetolysis. The article will also be used in the courses Botany 797B—Techniques in Electron Microscopy to teach students the techniques of high resolution electron microscopy. Application received by Commissioner of Customs: February 23, 1979.

Docket Number 79-00169. Applicant: Surgical Neurology Branch NINCDS—National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014. Article: Electron Microscope, Model JEM-100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used to study the structure of normal, injured and malignant biological cells and tissues of the nervous system. Scientific problems to be studied will include:

1. The ultrastructural characteristics of gliomas and other types of brain tumors.

2. Quantitative ultrastructural surface and cytoplasmic characteristics of chromatolytic and regenerating neurons and quiescent, hypertrophic and mitotic post-injury microglia, oligodendroglia and astroglia.

3. Quantitative ultrastructural surface and cytoplasmic characteristics of arachnoidal cells under quiescent and various experimental conditions.

4. Surface membrane characterization and differentiation of gliomas and other brain tumors.

5. Analysis of lectin and other receptor movement after alterations of membrane fluidity and cytoskeletal organization; surface and cytoplasmic events in transformation as well as nerve regeneration.

6. Quantitative analysis of fine structural changes in glioma cells after treatment with various chemotherapeutic agents such as CCNU, BCNU,

phenytoin, procarbazine, methotrexate.

Application received by Commissioner of Customs: February 20, 1979.

Docket Number 79-00170. Applicant: Columbia University, Henry Krumb School of Mines, 520 W. 120th Street, New York, New York 10027. Article: Specimen Heating Holder, Model 100CX-SHH and Power Control Unit, Model 100CX-SHU. Manufacturer: Japan Electronics Optics Laboratories Ltd., Japan. Intended use of article: The articles are accessories that will provide distinctly new experimental and analytical function to an existing electron microscope. One of the main purposes for which the equipment is to be used is for the study of coarsening, or growth, of platinum particles supported in metal catalysts. The article will also be used in the course Electron Microscopy, Met. M.S. E4154y: Techniques and theory of electron microscopy including operation of electron microscopes and the preparation of specimens for electron microscopy. Application received by Commissioner of Customs: February 23, 1979.

Docket Number 79-00171. Applicant: University of Virginia, Department of Anatomy, 1300 Jefferson Park Avenue, Box #439, Charlottesville, Va. 22908. Article: Electron Microscope, Model JEM-100S and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used to carry out the following research projects:

- (1) Dual tagged antibody globulins studies.
- (2) Branched myofilaments in cultured smooth muscle cells.
- (3) Changes in the membrane systems in various pathological conditions (e.g., muscular dystrophy).
- (4) Electron microscopy of cell surface-cytoskeletal associations in mouse preimplantation embryos.
- (5) Study of the intercellular junctions between cardiac cells and smooth muscle cells, especially in culture.

In addition, the article will be used to train graduate students, postdoctoral fellows, residents, and medical students in the use of an electron microscope. Application received by Commissioner of Customs: February 20, 1979.

RICHARD M. SEPPA,
Director, Statutory
Import Programs Staff.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 79-8308 Filed 3-19-79; 8:45 am]

[3510-25-M]

APPLICATIONS FOR DUTY FREE ENTRY OF SCIENTIFIC ARTICLES

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before April 9, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5:00 p.m., Monday through Friday, in Room 6886C of the Department of Commerce Building, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

Docket No. 79-00149. Applicant: DHEW/PHS/FDA/National Center for Toxicological Research, Chemistry Division/HFT-210, Jefferson, AR 72079. Article: High Resolution Mass Spectrometer, Model MS-50 and accessories. Manufacturer: Kratos Ltd., United Kingdom. Intended use of article: The article is intended to be used for accurate mass measurement of molecules having a molecular weight of up to 2000 for the identification of high molecular weight metabolites which are thermally unstable under electron impact mass spectrometry conditions. Application received by Commissioner of Customs: February 9, 1979.

Docket No. 79-00152. Applicant: Columbia University, Department of Neurology, 630 West 168th Street, New York, N.Y. 10032. Article: LKB 2128-010 Ultratome IV Ultramicrotome and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to prepare biopsy materials for electron microscopic examination. The experimental work will include studies of (1) the uptake of calcium by the sarcoplasmic reticulum of single chemically skinned skeletal muscle fibers; (2) examination of various animal and human muscle fibers in which the transverse tubular system has been impregnated with silver stains, to render it electron-opaque so that its three dimensional distribution can be determined; (3) examination of single chemically-skinned muscle

fibers in various states of contraction; (4) studies of the structural changes produced in animal muscle by various drug treatments; (5) studies of the role of satellite cells in muscle regeneration; and (6) structural changes induced by viral infections. Application received by Commissioner of Customs: February 12, 1979.

Docket No. 79-00153. Applicant: Ramapo College of New Jersey, Program in Biology, 505 Ramapo Valley Road, Mahwah, New Jersey 07430. Article: LKB 8800A Ultratome III Ultramicrotome complete and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section biological materials that have been embedded in an appropriate resin. These specimens will then be used in investigations that include ultrastructural studies on normal and pathologic plant and animal tissues, developmental studies on fungal systems, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interactions at host-parasite interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments. The article will also be used in the courses, Introduction of Electron Microscopy and Advanced Electron Microscopy I, II, and III which will involve a study of general principles on techniques and the use of the electron microscope to study the fine structure of tissues and cells and various subcellular organelles and the employment of cytochemical staining methods to localize various constituents. Application received by Commissioner of Customs: February 13, 1979.

Docket No. 79-00154. Applicant: Memorial Sloan-Kettering Cancer Center, 1275 York Avenue, New York New York 10021. Article: Therac 20/Saturne Medical Linear Accelerator and accessories. Manufacturer: Atomic Energy of Canada Ltd., Canada. Intended use of article: The article is intended to be used for the treatment of a study of effects of many forms of head and neck cancers, breast cancer and other peripherally situated tumors in addition to more extensive and deep seated lesions. The research programs in which the article will be used will include the following studies:

- (1) Total Nodal Irradiation for Hodgkin's Disease and Non-Hodgkin's Lymphoma.
 - (2) Interdisciplinary Study of the Management of Embryonal Rhabdomyosarcoma in Children.
 - (3) Combination Chemotherapy and Radical Radiation in Advanced Cancers of the Head and Neck.
 - (4) Gynecological Malignancies.
- Application received by Commissioner of Customs: February 13, 1979.

Docket No. 79-00155. Applicant: Brown University, Providence, RI 02912. Article: TE-280 High Pressure Carbon Dioxide Laser Amplifier. Manufacturer: Lumonics Research Ltd., Canada. Intended use of article: The article is intended to be used to amplify short pulses of ten micrometer laser radiation during the investigation of the temporal modification of ultra-short laser pulses in high pressure gas laser amplifiers. Application received by Commissioner of Customs: February 23, 1979.

Docket No. 79-00156. Applicant: State University of N.Y., Stony Brook, N.Y. 11794. Article: MM-Wave Klystron tube, Model VRT-2123A and accessories. Manufacturer: Varian Associates of Canada Ltd., Canada. Intended use of article: The article is intended to be used for operating a radio receiver at 130 GHz which is necessary to carry out a contract with NASA to conduct millimeter wave research in the upper atmosphere for pollutants. Application received by Commissioner of Customs: February 23, 1979.

Docket No. 79-00157. Applicant: University of Pennsylvania School of Medicine, 454 Johnson Pavilion/G2, 36th and Hamilton Walk, Philadelphia, Pennsylvania 19104. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for electron microscopic studies of animal specimens to further basic knowledge on cell and tissue ultrastructure and to reveal, at the ultrastructural level, the enzyme localization and distribution in cells and tissues developing under normal and pathological conditions. The article will also be used in the courses entitled Ultrastructure and Cytochemistry which will involve a study of general principles on techniques and the use of the electron microscope to study the fine structure of cells and various subcellular organelles and the employment of cytochemical staining methods of localize various enzymes. Application received by Commissioner of Customs: February 23, 1979.

Docket No. 79-00158. Applicant: University of Rochester, University of Rochester Medical Center, Pediatrics Dept., 601 Elmwood Avenue, Rochester, NY 14642. Article: LACS cell separation apparatus. Manufacturer: DeKoningh BV, Holland. Intended use of article: The article is intended to be used for the separation of erythrocytes differing in cell volume during investigations designed to increase the knowledge concerning human development, treatment and prevention of disease. Application received by Commissioner of Customs: February 23, 1979.

Docket No. 79-00159. Applicant: Stanford University, 851 Welch Road, Palo Alto, CA 94304. Article: FPA-141 projection Mask, Aligner and periph-

ery. Manufacturer: Canon Inst., Japan. Intended use of article: The article is intended to be used for research which deals with the fundamental physics and technology of small device geometry. Specifically, studies of x-ray lithography which will necessitate the preparation of masks of various materials with extremely small dimensions. The study of very thin SiO₂ films includes the fabrication of extremely small devices and modeling of these devices is also part of the research. Application received by Commissioner of Customs: February 23, 1979.

Docket No. 79-00160. Applicant: National Radio Astronomy Observatory Associated Universities, Inc., Edgemont Road, Charlottesville, Virginia 22901. Article: RWO-170 Backward Wave Oscillator. Manufacturer: Siemens AG, West Germany. Intended use of Article: The article is intended to be used as a signal source for the testing of millimeter wave frequency receiver components as well as a local oscillator, super heterodyne, for radio astronomy receivers at the frequencies of interest. The objectives to be pursued in the course of research are the investigation into natural phenomena, basic research in celestial mechanics, the formation of astronomical objects, and other physical and chemical investigations using radio astronomy instrumentation and techniques. Application received by Commissioner of Customs: February 23, 1979.

Docket No. 79-00161. Applicant: The University of Michigan, Department of Pathology, 1335 East Catherine Street, Ann Arbor, Michigan 48109. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of Article: The article is intended to be used to further the knowledge of the pathology of kidney, liver, skin, muscle, brain, lung, heart, spleen, bone, marrow, lymph node and gastrointestinal tract diseases and in classification of tumors by their ultrastructural characteristics. The experimental work includes the ultrastructural analysis of the hepatocytes in a variety of natural and experimental disease states, including viral and toxic hepatitis and Reyes syndrome. Blood disorders will be studied utilizing the incorporation of ferritin molecules into erythroblasts. The relationship between aging and PUVA treatment will be studied with respect to the ultrastructural features of the skin with specific reference to elastic tissue and dermal melanocytes. The effect of therapy on the electron-dense immune complexes in the glomeruli of patients with specific systemic lupus erythematosus will be studied in patients who have serial biopsies of their kidneys. Ultrastructural characteristics of neo-

plastic and non-neoplastic cells in cytologic specimens, particularly serous fluids, will also be studied. The article will also be used for the teaching of ultrastructural manifestations of disease to medical students, medical technology students resident physicians and practicing physicians. Application received by Commissioner of Customs: February 23, 1979.

Docket No. 79-00162. Applicant: National Aeronautics and Space Administration, Langley Research Center, Mail Stop 267, Hampton, Virginia 23655. Article: Air to Water Cross Flow Heat Exchanger. Manufacturer: GEA Luftkühlergesellschaft Happel GmbH and Co., West Germany. Intended use of Article: The article is intended to be used in the national Transonic Facility (NTF) for the study of High Reynolds Number Aerodynamic phenomena as related to defense and commercial aircraft. Application received by Commissioner of Customs: February 13, 1979.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Director, Statutory
Import Programs Staff.

[FR Doc. 79-8309 Filed 3-19-79; 8:45 am]

[3510-25-M]

NATIONAL BUREAU OF STANDARDS

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 79-00069. Applicant: National Bureau of Standards, B-344, Metrology Bldg., Washington, D.C. 20234. Article: Imacon 790/S20 fibre optic coupled camera with S20 photocathode and accessories. Manufacturer: John Hadland Ltd., United Kingdom. Intended use of Article: The article is intended to be used to study conduction and breakdown in insulating materials. Scheduled applications include measurement of the pre-breakdown streamers in transformer oil and water, measurement of the electric field distribution during electrical breakdown at the interface between epoxy and compressed sulfur hexa-

fluoride gas, and measurement of the lifetime of selected atomic states during arc extinction in gases.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is capable of resolving at least 16 frames per run at a rate less than or equal to 5×10^6 frames/second. Comparable instruments manufactured in the United States are limited to five frames per run. The National Bureau of Standards advises in its memorandum dated February 27, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Director, Statutory
Import Programs Staff.

[FR Doc. 79-8310 Filed 3-19-79; 8:45 am]

[3510-25-M]

VETERANS ADMINISTRATION MEDICAL CENTER—IOWA CITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 79-00013. Applicant: Veterans Administration Medical Center, Iowa City, Iowa 52240. Article: Hampel Micropertusion Pump, Type III 2-50 nl/mn. Manufacturer: Wolfgang, Hampel, West Germany. INTENDED USE OF ARTICLE: The article is intended to be used in a study

designed to isolate the macula densa from the glomerula and perfuse the macula densa with varying concentrations of chloride at normal tubular flow rates. The effects of this perfusion the pre and post glomerular vascular resistances will then be evaluated with micropuncture techniques. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides constant perfusion of the very low rates of 2 to 50 nanoliters per minute. The Department of Health, Education, and Welfare advises in its memorandum dated March 1, 1979 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

RICHARD M. SEPPA,
Director, Statutory
Import Programs Staff.

[FR Doc. 79-8311 Filed 3-19-79; 8:45 am]

[3510-25-M]

IMPORTERS' TEXTILE ADVISORY COMMITTEE

Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976) notice is hereby given that a meeting of the Importers' Textile Advisory Committee will be held on April 26, 1979 at 10:30 a.m. in Room 6802, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

The Committee was established by the Secretary of Commerce on August 13, 1963 to advise U.S. Government officials of the effects on import markets of cotton, wool and man-made fiber textile agreements.

The agenda for the meeting will be as follows:

1. Review of import trends.
2. Implementation of textile agreements.
3. Report on conditions in the domestic market.
4. Other business.

A limited number of seats will be available to the public on a first-come basis. The public may file written statements with the Committee before or after each meeting. Oral statements may be presented at the end of the meeting to the extent time is available.

Copies of the minutes of the meeting will be made available on written request addressed to the ITA Freedom of Information Officer, Freedom of Information Control Desk, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

Further information concerning the Committee may be obtained from Arthur Garell, Director, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-5078.

Dated: March 14, 1979.

ARTHUR GARELL,
Director, Office of Textiles.

[FR Doc. 79-8277 Filed 3-19-79; 8:45 am]

[3510-15-M]

Maritime Administration

[Docket No. S-628]

TRADE AREA 1

Determination of Essentiality

Notice is hereby given that the Assistant Secretary for Maritime Affairs, with respect to the proposed finding pursuant to section 211 of the Merchant Marine Act, 1936, as amended, as noticed in the FEDERAL REGISTER issue of November 28, 1978 (43 FR 55435), in Docket No. S-628 and after taking into full consideration all of the comments submitted in support of and in opposition to the proposed finding, found and determined that:

I. There is a substantial quantity of cargo moving on Trade Area 1 carried almost exclusively by foreign-flag carriers, as well as a substantial diversion of Mid-West generated cargo through Canadian ports, which indicates that a year-round service on Trade Area 1, including service via U.S. North Atlantic ports (Maine-Virginia inclusive) during the winter months, could be available to a U.S.-flag carrier or carriers.

II. Annually, pursuant to section 211, between approximately December 15 and April 15, intermodal service between U.S. Great Lakes ports and ports in the United Kingdom and Continent, via U.S. North Atlantic ports, under through intermodal bills of lading issued to and from Great Lakes ports in conjunction with connecting land carriers, when offered in connection with all-winter service during the balance of the year, is essential for the promotion, development, expansion

and maintenance of the foreign commerce of the United States.

The November 28, 1978, Notice in the FEDERAL REGISTER involved a proposed determination pursuant to section 211 of the Act concerning the essentiality of a service on Trade Area 1, including service via Albany, New York, during the time the St. Lawrence Seaway is closed to navigation. That Notice was in furtherance of an application filed by Great Lakes-Atlantic Steamship Company on September 1, 1978, for a 20-year Operating-Differential Subsidy Contract for service on essential Trade Area 1 utilizing a fleet of five C-4 type vessels, either fully or partially containerized, between U.S. ports on the Great Lakes and the St. Lawrence River, intermediate Canadian Great Lakes ports and ports in the United Kingdom and Continental Europe. During the period of the year when the St. Lawrence Seaway is inaccessible to ocean traffic due to ice conditions, approximately December 15 through April 15, the company proposed to provide service via the port of Albany, New York, issuing intermodal bills of lading to and from Great Lakes ports by connecting rail carriers.

The following replies were received in support of the proposed section 211 finding:

Albany Port District Commission	12/4/78
Council of Lake Erie Ports	12/5/78
Niagara Frontier Transportation Authority	12/5/78
Ceres Terminals Incorporated	12/5/78
Detroit/Wayne County Port Commission	12/6/78
Chicago Regional Port District	12/6/78
Illinois Dept. of Business and Economic Development	12/6/78
Western Great Lakes Ports Association ..	12/6/78
Cleveland World Port	12/6/78
N.Y. State Department of Transportation	12/7/78
Lykes Bros. Steamship Co., Inc.	12/8/78
Great Lakes Task Force	12/8/78
State of New York	12/13/78
Port of Buffalo Users Group	12/14/78
Seaway Review	12/14/78
International Association of Great Lake Ports	12/15/78
Ogdensburg Bridge & Port Authority	12/15/78

The following replies were received in opposition to the proposed section 211 finding:

Waterman Steamship Corporation	12/7/78
Prudential Lines Incorporated	12/8/78
United States Lines, Inc.	12/8/78
Sea-Land Service, Inc.	12/8/78

Comments supporting the principle that winter service from ice-free U.S. ports is properly viewed as a part of the basic Great Lakes service argued that (1) a viable water service on the Great Lakes is not possible if ships must be laid up during the four-month winter periods; (2) shippers would obtain continuity of service on a year-round basis if alternative ports could be used during the winter; (3) such winter service would not injure other carriers as there is no reason to believe

cargo would be tendered in the winter that would not be tendered in the summer; (4) if the Board were to hold that the applicant could not serve the trade from alternative ports, the result would be to deny U.S.-flag service which is otherwise non-existent and frustrate the strong desire of Congress to permit Great Lakes service; and (5) the proposed finding limited to rail service to Albany, New York, is too narrow a definition of the necessary alternate service and should be broadened to include other inland carriers as well as other ports.

Comments opposing the proposed finding argued that (1) the proposed finding would exceed the Assistant Secretary's statutory authority, which under section 211 is limited to findings in regard to all-water services; (2) section 809(a) of the Act, by its terms, neither expressly nor implicitly alters or supersedes any other provision of the Act; (3) the proposed finding would deprive certain persons of their section 605(c) standing to intervene; (4) the proposed essentiality determination appears unwarranted, premature, and lacking the factual basis for an informed judgment under section 211; (5) if the proposed administrative determination, which takes into account the origin of the Albany cargo, is made, the Board should reconsider and reverse recent holdings that cargo origination is not relevant to standing, interests, and statistical findings under section 605(c); (6) the section 211 matter should be set down for public hearing to establish on a public record the impact of such a determination; and (7) in the absence of such an investigation, the proposed determination would be arbitrary and an abuse of discretion.

The Assistant Secretary carefully considered all these arguments but was unpersuaded by the opposing arguments. Previous Board determinations did only take into account all-water services. The Great Lakes overseas services require special consideration, however, since the winter closure of the Seaway is an inherent characteristic of operations on the Great Lakes. Successful steamship operation from the Great Lakes, particularly for companies seeking to serve the Great Lake exclusively, requires some means of offering shippers year-round service. The use of an alternative service during the winter months via tidewater ports with through intermodal bills of lading issued to and from Great Lakes ports in conjunction with connecting rail carriers provides a means of offering that year-round service. The shipper would be able to book cargo with the same carrier throughout the year.

As to the arguments that the proposed finding would administratively

overrule findings and policies previously adopted, the proposed finding is limited and restrictive in its application. It deals only with cargo which would move year-round via an all-water route except for physical limitations imposed by climatic conditions. This sets it apart from minibridge traffic which is primarily influenced by economic and financial considerations.

The requests that a hearing under section 211 be held has no statutory basis as section 211 does not require a hearing. No useful purpose would be served by having such a hearing.

The section 211 finding herein is limited to consideration under section 211 of the Act and does not address section 605(c) of the Act. The standing of persons to protest a subsidy application and other issues under section 605(c) of the Act are matters for the Maritime Subsidy Board to decide.

In taking the final section 211 finding on the essentiality of the year-round service, the Assistant Secretary noted that the following cargo has moved on Trade Area No. 1 during the past three and one-half years:

LINER TRAFFIC ON TRADE AREA 1

(Tonnage in Long Tons)

Export					
Total		U.S. Flag		% U.S. Liner	
Liner	Non-Liner	Liner	Non-Liner		
1975...	212.5	3,603.7	2.7	6.9	1
1976...	219.3	4,181.6	3.9	.1	2
1977...	179.9	3,950.0	1.8	12.4	1
**1978...	14.4	703.2	—	—	*
Imports					
Total		U.S. Flag		% U.S. Liner	
Liner	Non-Liner	Liner	Non-Liner		
1975...	206.3	1,915.6	.9	—	*
1976...	323.1	2,446.2	3.2	—	1
1977...	307.7	4,317.6	1.7	11.1	1
1978...	29.9	539.7	.1	—	*

*Less than one percent.

**First 6 month period (ice conditions were prevalent thru mid-April).

Source: Bureau of Census.

It was noted from the above table that U.S. liner carriage on Trade Area 1 during the past three and one half year period never exceeded two percent of the outbound movements and one percent or less of the liner imports carried in the trade. The predominant cargo moving on the trade both in-

bound and outbound was the non-liner commodities with imports (4,317,600 L/T) exceeding exports (3,950,000 L/T) in 1977. Despite the imbalance in favor of non-liner tonnages, the following commodity descriptions were noted under the ten top commodities for both liner and non-liner shipments:

EXPORTS 1976 (LONG TONS)

Code	Commodity Description	Liner Tons	Non-Liner Tons
04.....	Cereal and Cereal Pre.....	20,691	2,642,262
27.....	Crude Fertilizer and Mineral.	14,932	126,581
01.....	Meat and Meat Preparation.	14,703	26,772
28.....	Metalliferous Ore and Scrap.	9,155	395,549
05.....	Fruit and Vegetables.....	14,254	62,278

IMPORTS 1976 (LONG TONS)

Code	Commodity Description	Liner Tons	Non-Liner Tons
67.....	Iron and Steel.....	167,507	1,265,780
68.....	Non Ferrous Metals.....	38,319	51,414
71.....	Mach.-Non Electric.....	25,666	10,049
11.....	Alcoholic and Non Beverages.	17,668	7,637
28.....	Metalliferous Ore and Scrap.	13,757	51,401
73.....	Transport Equip.....	6,403	40,775
27.....	Crude Fertilizer and Mineral.	5,361	32,071

U.S. EXPORTS VIA CANADA BY COUNTRY OF DESTINATION

Ranking	Country	Dollar value (thousands)	Percent Long tons	Percent
1	England.....	113,245	22.8	81,358
2	Belgium/Luxemb.....	98,845	19.9	54,642
3	Netherlands.....	57,951	11.7	147,345
4	W. Germany.....	57,144	11.5	58,579
5	France.....	46,712	9.4	50,649
10	Ireland.....	3,961	0.8	2,978
Total.....		377,858	76.1	395,551
All others.....		118,757	23.9	192,437
Total.....		496,615	100.0	587,988

Of the total tonnage transhipped via Canadian ports in 1976, 64.5 percent based on value, or 42.1 percent, based on tonnage, originated in the Detroit area. Tabulations were based on tonnage moved from Detroit, Michigan's U.S. Custom District.

While statistics are not available as to the additional diversion of U.S.

Based on the similarity of tonnages shipped on both liner and non-liner, outbound and inbound, it appeared that additional liner tonnage could quite possibly penetrate the non-liner cargo segment of the trade.

The Assistant Secretary also noted that in January of 1978 the Department of Commerce published "U.S. Exports Transhipped via Canadian Ports". The basic data for this report were taken from export declarations filed by shippers with the U.S. Customs Bureau.

The value and weight of Canadian diversion cargo from U.S. points of origin for 1974, 1975 and 1976 were as follows:

TOTAL EXPORT VIA CANADA

ANNUAL COMPARISONS

Year	Value	Tons
1974.....	\$459,941,608	579,037
1975.....	434,854,388	477,436
1976.....	496,715,493	587,988

Six of the ten top countries importing via Canadian ports in 1976 on Trade Area No. 1 were as follows:

ties and ice free harbors. Despite the distance variance between ports, data obtained from the Great Lakes regional Office revealed that the applicable inland surface transportation rates for the movement of both exported and imported containers during 1977 showed that the rates are highly competitive as between North Atlantic ports.

Because of the similarity of rates between most Great Lakes and North Atlantic ports, the excellent cargo handling facilities and favorable overland routings, it was found that the scope of the off season routing of Great Lakes commodities encompass the range of Eastern seaboard ports extending from Virginia to Maine. Rates imposed due to additional distances and the shortage of adequate container facilities at ports further south preclude the necessity of extending the range beyond the North Atlantic area.

Further, the Assistant Secretary concluded that the section 211 finding provided a sound basis for U.S.-flag carriers to enter a market now dominated almost exclusively by foreign-flag carriers without any injury to carriers serving the North Atlantic area, since the winter service would reach only to cargoes tendered at a Great Lakes port. The Great Lakes carriers would in effect be limited to the same shippers and sources of cargo available during that portion of the year when the Seaway is open to navigation.

Finally, the Assistant Secretary affirmed that the principles involved in the final 211 determination were uniquely the result of Great Lakes operation. The Assistant Secretary was not persuaded that the economic and financial forces involved in minibridge and related intermodal movements were analogous to the physical closure of the Great Lakes by ice conditions during the winter months.

(Catalog of Federal Domestic Assistance Program No. 11.504, Operating-Differential Subsidy (ODS).)

Dated: March 14, 1979.

By Order of the Assistant Secretary of Commerce for Maritime Affairs.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 79-8106 Filed 3-19-79; 8:45 am]

[3510-13-M]

National Bureau of Standards

HINGED INTERIOR WOOD DOOR UNITS

Intent To Withdraw Voluntary Product Standard

In accordance with section 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10), notice is hereby given of the intent to withdraw Voluntary Product Standard PS 32-70, "Hinged Interior Wood Door Units."

This withdrawal action is being proposed for the reason that PS 32-70 is adequately covered by the National Sash and Door Jobbers Association's standard 1-79, "NSDJA's Recommended Product Standard 1-79 for Interior Pre-Hung Door Units," and duplication is inappropriate and not in the public interest.

Any comments or objections concerning this intended withdrawal of this standard should be made in writing to Standards Development Services, National Bureau of Standards, Washington, D.C. 20234 by April 19, 1979. The effective date of withdrawal will not be less than 60 days after the final notice of withdrawal. Withdrawal action terminates the authority to refer to a published standard as a voluntary standard developed under the Department of Commerce procedures from the effective date of withdrawal. For further information, contact Karl G. Newell, Area Code 301-921-2356.

Dated: March 14, 1979.

ERNEST AMBLER,
Director.

[FR Doc. 79-8282 Filed 3-19-79; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric Administration

MARINE MAMMALS PERMIT

Receipt of Application

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407); and the Regulations Governing

the Taking and Importing of Marine Mammals (50 CFR Part 216), and for Scientific purposes under the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), and the regulations governing endangered species permits (50 CFR Parts 220-222).

1. Applicant: a. Name: Bureau of Land Management (P210). b. Address: P.O. Box 1159, Anchorage, Alaska 99510.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Grey whales (*Eschrichtius robustus*), up to 590; Bowhead whales (*Balaena mysticetus*), up to 2,575.

4. Type of Activity: To conduct behavioral and distribution studies which may cause harassment of some individuals, and to collect specimen material from native killed or stranded individuals.

5. Location of Activity: In U.S. waters off Alaska, primarily in the Beaufort Sea.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the FEDERAL REGISTER the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before April 19, 1979. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue North, Seattle, Washington 98109; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: March 15, 1979.

RICHARD B. ROE,
Acting Deputy Director, National
Marine Fisheries Service.
[FR Doc. 79-8352 Filed 3-19-79; 8:45 am]

[3510-22-M]

MODIFICATION OF PERMIT

Notice is hereby given that, pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Public Display Permit No. 181 issued to the Aquarium of Niagara Falls on May 4, 1977, is modified in the following manner:

Section B is modified by deleting Section B-7 and substituting therefor the following:

"7. This Permit is valid with respect to the taking authorized herein until December 31, 1979."

This modification is effective March 20, 1979.

The permit, as modified, and documentation pertaining to the modification is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California, 90731; and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts, 01930.

Dated: March 14, 1979.

WINFRED H. MEIBOHM,
Associate Director, National
Marine Fisheries Service.
[FR Doc. 79-8353 Filed 3-19-79; 8:45 am]

[3510-60-M]

National Telecommunications and Information
AdministrationFREQUENCY MANAGEMENT ADVISORY
COUNCIL

Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 3:30 p.m. on April 5, 1979, in the Aspen Room at the National Telecommunications and Information Administration, 1325 "G" Street NW., Washington, D.C. (Public entrance to the building is on "G" Street, between 13th Street and 14th Street NW.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 11 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The agenda items for the meeting will be:

- (1) Approval of the Draft Record of the February 15, 1979, meeting.
- (2) FMAC study of the proposed Communications Act of 1978—Review of Draft Report.
- (3) Any other business of the Council.
- (4) Scheduling of the next meeting.

The meeting will be open to public observation; and a period will be set aside for oral comments or questions by the public. Each person will be limited to 10 minutes. More extensive questions or comments should be submitted in writing before April 4th. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 15 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request.

Inquiries may be addressed to the Council Control Officer, Mr. Charles L. Hutchison, National Telecommunications and Information Administration, Room 268, 1325 "G" Street NW., Washington, D.C. 20005, telephone 202-724-3301.

Dated: March 15, 1979.

C. C. DODSON,
Committee Liaison Officer, National
Telecommunications
and Information Administration.

[FR Doc. 79-8290 Filed 3-19-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

NATIONAL PETROLEUM COUNCIL, TASK
GROUPS OF THE COMMITTEE ON MATERIALS
AND MANPOWER REQUIREMENTS

Meetings

Notice is hereby given that two task groups of the Committee on Materials and Manpower Requirements will meet in March 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Materials and Manpower Requirements will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The two task groups scheduling meetings are the Regulatory Impact Task Group and the Tubular Steel Task Group. The time, location and agenda of each task group meeting follows:

The first meeting of the Regulatory Impact Task Group will be on Tuesday, March 20, 1979, starting at 2:00 p.m. in the 20th floor Conference Room of the Tenneco Building, 1010 Milam Street, Houston, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of the scope of the NPC study on Materials and Manpower Requirements.
3. Discussion of the study methodology to be employed by the Regulatory Impact Task Group.
4. Discussion of the timetable of the Regulatory Impact Task Group.
5. Discussion of any other matters pertinent to the overall assignment of the Regulatory Impact Task Group.

The fourth meeting of the Tubular Steel Task Group will be on Thursday, March 29, 1979, starting at 9:00 a.m. in Room 1873 of the Shell Oil Company, Two Shell Plaza, Houston, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of the overall progress of the Tubular Steel Task Group.

3. Review the status of separate assignments of the Tubular Steel Task Group.

4. Discussion of any other matters pertinent to the overall assignment of the Tubular Steel Task Group.

The meetings are open to the public. The Chairmen of the task groups are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task groups will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements should inform James R. Hemphill, Office of Resource Applications, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meetings will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on March 13, 1979.

GEORGE S. McISAAC,
Assistant Secretary for
Resource Applications.

MARCH 13, 1979.

[FR Doc. 79-8272 Filed 3-19-79; 8:45 am]

[6450-01-M]

NORTHERN TIER STUDY REPORT

Public Hearings and Comments on the Department of Energy's (DOE) Draft Report: Petroleum Supply Alternatives for the Northern Tier and Inland States Through the Year 2000

AGENCY: Department of Energy.

ACTION: Notice of Public Hearings and comment on the Department of Energy's (DOE) draft report entitled: *Petroleum Supply Alternatives for the Northern Tier and Inland States Through the Year 2000*, dated February 21, 1979.

SUMMARY: DOE has recently released a preliminary draft study of the various transportation system alternatives which have been proposed to deliver Alaskan and other crude oils from the West Coast to Northern Tier and Inland States. A final report will not be issued until receipt and consideration of public comments.

For the purposes of the study, "Northern Tier States" includes Washington, Oregon, Idaho, Montana, Wyoming, North Dakota, Minnesota, Wisconsin, Michigan, Illinois, Indiana

and Ohio. The term "Inland States" includes those States other than the Northern Tier States, California, Alaska and Hawaii.

The DOE crude oil transportation study is being conducted to address the dual issues of transportation alternatives for delivery of Alaska North Slope (ANS) crude oil and the means for resolving forecasted petroleum transportation deficits in Northern Tier States.

DOE seeks public comments on the preliminary results of the crude oil transportation study in preparation for issuance of a final report in early summer 1979. Comments on the ability of the various alternatives to penetrate existing pipeline markets will be particularly helpful.

This Notice supplements the announcement in the *FEDERAL REGISTER* issue (Volume 44, No. 46), Wednesday, March 7, 1979, beginning on page 12486 to include an additional hearing location for Public Comment on the draft report identified under ACTION, above.

DATES: Comments by May 5, 1979, 4:30 p.m. (comments deadline of April 20, 1979, 4:30 p.m. stated in the initial announcement of hearings is hereby extended to May 5, 1979, 4:30 p.m.); requests to speak at this additional hearing location by March 29, 1979, 4:30 p.m.; Hearing date: April 18, 1979, 9:30 a.m.

ADDRESSES: All comments to: Public Hearing Management, Box WY, Department of Energy, Room 2313, 2000 M Street, NW., Washington, D.C. 20461; Request to Speak: Department of Energy, Attention: Dale Erickson, 1075 S. Yukon St., P.O. Box 26247, Belmar Branch, Lakehead, Colorado 80226, (303) 234-2420.

ADDITIONAL HEARING LOCATION: Federal Building, Westside Conference Room, Corner of Pine and Pattee, Missoula, Montana 59807.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Department of Energy, Public Hearing Management, 2000 M Street, N.W., Room 2214, Washington, D.C. 20461, (202) 254-5201.

William L. Webb (Office of Public Information), Department of Energy, Public Hearing Management, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, (202) 634-2170.

Mario Cardullo (Study Director), Department of Energy, 20 Massachusetts Avenue, N.W., Room 6105, Washington, D.C. 20545, (202) 376-4663.

Paul Douglass (Office of General Counsel), Department of Energy,

Forrestal Building, 1000 Independence Avenue, S.W., Room 6A-141, Washington, D.C. 20585, (202) 252-6718.

SUPPLEMENTAL INFORMATION:

I. BACKGROUND

The Northern Tier States have been impacted by the Canadian Government's announced curtailment of crude oil exports in the early 1980's and by the continued decline of domestic crude supplies. In addition, there has been a growing surplus of Alaskan North Slope (ANS) crude oil on the West Coast of the United States. These factors have stimulated a series of alternative proposals to transport both ANS and foreign crude oil to the Northern Tier region.

Recognizing the possibility that a potentially needed project might not be built, the 95th Congress enacted legislation (Title V, Pub. L. 95-617) which would provide a decisionmaking process by which the President could approve one or more projects for expedited processing of Federal permits.

In response to these developments and to concerns raised in earlier departmental studies about the adequacy of energy transportation facilities in some Northern Tier States, DOE established in early 1978 an energy transportation project office which would:

- Forecast the demand for crude oil and refined petroleum products in the Northern Tier and Inland States through 2000;

- Assess the potential supply of petroleum under the current crude and petroleum product transportation system;

- Evaluate various transportation alternatives to move crude oil to the Northern Tier and Inland States;

- Assist the U.S. Department of the Interior in preparing the environmental impact statement for the Northern Tier Pipeline Company proposal; and

- Provide an analytical basis upon which the President may select a crude oil transportation alternative or alternatives deemed to be in the national interest for expedited treatment in the Federal permitting process.

II. ALTERNATIVES

The crude oil transportation alternatives considered in the DOE study were divided into Northern route and Southern route categories. The alternatives considered for meeting forecasted transportation deficits are:

Northern Routes

- Northern Tier pipeline
- Trans-Mountain pipeline reversal
- Foothills (Alaska Highway) pipeline
- Kitimat pipeline
- Unit trains

- Arctic marine systems (Dome, Globtik, and Seatrail)

Southern Routes

- Expanded midcontinent pipelines (including Texoma and Northern pipeline proposals)
- PACTEX and Four Corners pipelines*
- Trans-Guatemala pipeline
- Panama Transshipment (Oil Port) Terminal Facility

III. PRELIMINARY FINDINGS

The preliminary findings regarding various transportation deficits are:

- The Northern Tier States face potential transportation deficits for meeting average consumer demand ranging from 0 in 1980 to between 226 and 384 MB/D of refined product in 2000.

- This unfulfilled need is concentrated in the Montana and Minnesota refinery centers.

- Under normal operating conditions (90% refinery capacity utilization), potential transportation deficits for meeting average refinery demand range from 109 MB/D in 1980 to 214 MB/D of crude oil in 2000.

- Transportation deficits for meeting peak consumer demand range from 52 MB/D in 1980 to 847 MB/D in 2000. Transportation deficits for meeting peak refinery demand range from 157 MB/D in 1980 to 621 MB/D in 2000.

The potential for using ANS crude oil in the Northern Tier and Inland States is affected by a number of factors including existing refinery configurations, transportation economics, and types of products required by consumers. This study analyzed these various factors and found that:

- The maximum processing capacity for ANS crude in the Northern Tier States is 625 to 708 MB/D, if other high sulfur crude oils are excluded.

- It is unlikely that indigenous high sulfur crudes such as those available in Wyoming and other Northern Tier States would be displaced. Therefore, the maximum processing capacity for ANS crude is reduced to 400-500 MB/D with 25 to 30% of this potential concentrated in Washington State refineries.

- Based on this processing potential, a west-to-east crude oil pipeline could transport between 300 to 350 MB/D of ANS crude from the West Coast, provided that the economics were competitive.

Assessment of Alternatives

- Northern Tier refineries are capable of absorbing approximately 300 to 350 MB/D of ANS crude oil. To that extent, a pipeline serving these refineries from the West Coast would assist

*SOHIO has announced its plans to discontinue this project.

in the disposition of surplus crude oil and encourage increased production in California and Alaska.

● A pipeline from the west coast (Northern route) could be competitive in delivering foreign sweet crude oil, such as Indonesia light crude, to mid-continent refineries. The economic viability of such a pipeline depends on market conditions in the important midcontinent refinery area.

How to Obtain Draft Report

Copies of the draft report may be obtained by writing the Office of Public Information, Department of Energy, Economic Regulatory Administration, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, or the Press Room, Department of Energy, Room 8F-044, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

IV. PROCEDURES FOR SUBMISSION OF WRITTEN COMMENTS AND PUBLIC HEARINGS

A. WRITTEN COMMENT PROCEDURES

Interested parties are invited to participate in this proceeding by submitting data, views, and arguments with respect to the specific items for comment set forth in this Notice. Comments should be identified on the outside of the envelope and on the documents submitted to the Department of Energy with the designation, "Northern Tier Public Inquiry." Ten (10) copies should be submitted. All comments will be available for public inspection in the Department of Energy, ERA Office of Public Information, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Comments should be received by May 5, 1979, 4:30 p.m., in order to be considered.

Any information or data you consider to be confidential must be so identified and submitted in writing, on copy only. The DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

B. PUBLIC HEARINGS

1. *Requesting Opportunity to Participate*—The time and place for this additional hearing is indicated in the "DATE" and "ADDRESS" section of this Notice. If necessary to present all testimony, the hearing will be continued at 9:30 a.m. of the next day following the first day of the hearing.

Any person may make a written request for an opportunity to make an oral presentation at the hearing. Requests should be submitted by March 29, 1979, 4:30 p.m. You should provide a phone number where you may be contacted through the day before the hearing. If you are elected to be heard,

you will be so notified by the Department of Energy before 4:30 p.m., April 13, 1979. You must bring 100 copies of your statement to the Missoula (Montana) Hearing Room location on the morning of the hearing.

2. *Conduct of hearings*. DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. Each presentation may be limited based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if she or he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any person making a statement at the hearing to the presiding official at the above address before 4:30 p.m., on the day prior to the hearing.

Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question in writing to the presiding officer, DOE, or the presiding officer, if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer. Any further procedural rules needed for proper conduct of this hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the ERA Office of Public Information, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Issued at Washington, D.C., March 14, 1979.

ALVIN L. ALM,
Assistant Secretary for
Policy and Evaluation.

[FR Doc. 79-8292 Filed 3-19-79; 8:45 am]

[6450-01-M]

Economic Regulatory Administration

[Docket No. ERA-R-79-10]

REVIEW OF NATURAL GAS CURTAILMENT PRIORITIES AND CERTAIN OTHER RELATED GAS ISSUES UNDER THE NATURAL GAS ACT AND THE NATURAL GAS POLICY ACT

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Inquiry and Request for Comments.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of an inquiry into ERA's responsibility to establish and review natural gas curtailment priorities under the Natural Gas Act and the Natural Gas Policy Act of 1978 and certain other issues relating to the management of natural gas distribution in a natural gas emergency.

The Department of Energy Organization Act transferred the responsibility to review and establish natural gas curtailment priorities from the Federal Power Commission to the Secretary of Energy, who delegated this authority to the Administrator of ERA. As part of the review process in this inquiry we want to consider the impacts on curtailment policy of Title IV of the Natural Gas Policy Act and the new emergency authorities provided to the President under the National Energy Act, particularly those established in Title III of the Natural Gas Policy Act. Additionally, in this inquiry, we seek your comments on how best to implement those emergency authorities. We also request comments on the relationship of the Administrator's import authority under the Natural Gas Act and Department of Energy Organization Act, which allows the Administrator to place curtailment conditions on natural gas imports, to ERA's overall curtailment authority.

DATES: Written comments by May 31, 1979, 4:30 p.m.

ADDRESS: All comments to Office of Public Hearings Management, Economic Regulatory Administration, Room 2313, Docket No. ERA-R-79-10, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION:

Robert C. Gillette (Office of Public Hearing Management), Economic Regulatory Administration, 2000 M Street, NW., Washington, D.C. 20461, (202) 254-5201.

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, NW., Room B110, Washington, D.C. 20461, (202) 634-2170.

Albert F. Bass (Division of Natural Gas Regulations), Economic Regulatory Administration, 2000 M Street, NW., Room 3308, Washington, D.C. 20461, (202) 632-4721.

James K. White (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue, NW., Room 7134, Washington, D.C. 20461, (202) 633-8814.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. ERA's Review
- III. Other Related Issues
- IV. Issues for Comment
- V. Comment Procedures

I. BACKGROUND

Prior to October 1, 1977, when the Department of Energy (DOE) came into existence, Federal natural gas curtailment jurisdiction over the interstate pipelines was exercised exclusively by the Federal Power Commission (FPC) pursuant to its authority under the Natural Gas Act (NGA). The FPC dealt with curtailment on a case-by-case basis for individual interstate pipelines. However, in virtually all cases, the FPC applied, in one form or another, the curtailment policy set out in a series of policy statements it had issued in 1973 and 1974.¹ The crux of the policy—the order of priorities for curtailment—was set out in FPC Order No. 467-B, and the FPC priority system is generally referred to by that designation.

The 467-B system set out nine priority of service end-use categories, generally ranking residential and small commercial use in the highest priorities (that is, last to be curtailed) and interruptible large volume boiler fuel industrial use in the lowest, first-curtailled, priorities.²

The end-use priority system concept is based on several considerations. One is a recognition of the importance of gas used to protect health, safety and other human needs. Another consideration is the operational difficulty in physically cutting off or reducing service to residential and small commercial customers. A third reflects the differences in the costs of converting to an alternate fuel. The 467-B system is an attempt to curtail uses in the order of conversion costs to achieve the most efficient use of resources, taking into account the important health, safety and operational issues.

¹The FPC curtailment policy is contained in a series of orders in Docket No. R-467. These orders appear at 18 CFR 2.78 and are: Order No. 467, 49 FPC 85 (1973); Order No. 467-A, 49 FPC 217 (1973); Order No. 467-B, 49 FPC 583 (1973); and Order No. 467-C, 41 FPC 1199 (1974).

²For your information, a list of the 467-B priorities is attached to this notice as an appendix.

While the historical 467-B interstate curtailment priorities system is reputed to determine actual end-use curtailments, in reality it does not directly affect end-users. Rather, it is a method of allocating reduced supplies of gas only among the interstate pipelines' contractual customers, who are in most cases local distribution companies but also include some other pipelines and large volume end-users. The amount of the pipeline's gas received by a distribution company in such circumstances depends on the relative proportion of high versus low priority consumers in the distribution company end-user profile. However, that profile may not necessarily reflect the actual usage being served at any one time since the customer end-uses reflected in it are generally based on requirements from some prior based period. See *State of North Carolina vs. FERC*, 584 F.2d 1003 (D.C. Cir. 1978) and *Natural Gas Survey: Report to the Federal Power Commission; Technical Advisory Committee on "Curtailment Strategies."*³

The curtailment plans having a more direct effect on the amount of gas actually received by end-users are those established by the state utility commissions or the distribution companies. These curtailment plans direct the allocation of the total amount of gas received by a distribution company from all its interstate pipeline suppliers, as well as any additional gas purchased directly from producers or the intrastate market and its own supplemental supplies (for example, propane air mixtures or synthetic natural gas manufactured from naphtha or LPGs). The latter categories tend to be more expensive than the gas sold by the interstate pipelines.

Therefore, the direct effect of the traditional Federal curtailment policy has been to determine the amount of less expensive interstate gas available to distribution companies and end-use customers in situations where an interstate pipeline does not have enough gas to meet all its contractual obligations or the requirements established in the end-use profile of the interstate pipeline's customers. The Federal curtailment system has also served as a model for the curtailment plans of local distribution companies.

Under the Department of Energy Organization Act (Pub. L. 95-91) (DOE Act), curtailment jurisdiction under the Natural Gas Act is divided. Sections 301(b) and 402(a)(1)(E) assign the Secretary of Energy full responsibility regarding "the establishment and review of priorities for such curtailments." The Secretary has delegat-

³Copies of the report will be made available at the Public Information Office, Room B-110, 2000 M St., NW., Monday-Friday, 8:00 a.m. to 4:30 p.m.

ed this authority to the Administrator of the Economic Regulatory Administration (ERA) (DOE Delegation Order No. 0204-4, October 1, 1977, 42 FR 60726, November 29, 1977). On the other hand, the Federal Energy Regulatory Commission (FERC) is assigned all other curtailment functions not assigned to the Secretary, including administration and enforcement of curtailment plans. Section 403 of the Natural Gas Policy Act of 1978 (Pub. L. 95-621) (NGPA) recognizes this division of responsibility by directing the Secretary of Energy to issue rules concerning curtailment priorities for natural gas used for certain agricultural and industrial purposes and directing the FERC to implement them pursuant to their separate authorities under the DOE Act.

Sections 401, 402, and 403 of the NGPA directly affect curtailment policy by identifying and ranking three broad end-use categories of natural gas uses: (1) High priority, (2) essential agricultural, and (3) essential industrial feedstock and process. These sections establish the means for further refining the definitions of those categories and require that those priorities be established by rule. For the first time there exists at least part of a curtailment priority system which is mandated by Federal statute. While the NGPA system resembles the 467-B system, it is different not only because of its statutory mandate, but also because the definitions established by the NGPA may not coincide with the definitions of comparable terms in the 467-B system.

Section 401 requires the Secretary of Energy to prescribe a rule, within 120 days of the NGPA's enactment, restricting interstate pipelines from curtailing the essential agricultural use requirements certified by the Secretary of Agriculture. Essential agricultural uses may only be curtailed when necessary to meet the needs of other, higher priority uses, such as residences, schools, and hospitals, or when it is determined by the FERC, in consultation with the Secretary of Agriculture, that an alternate fuel is "economically practicable" and "reasonably available" for that essential use. A proposed rule implementing Section 401 was published by the Economic Regulatory Administration on November 22, 1978 (43 FR 54660), and a final rule was issued on March 9, 1979, the statutory deadline. This rule will be implemented by the FERC.

We have not attempted to answer any broad curtailment issues in our section 401 rulemaking. It is a narrow rule which seeks to implement the statute by the required deadline while deferring the broader curtailment questions which are raised in this inquiry.

Section 402 of the NGPA directs the Secretary of Energy to prescribe a rule limiting the circumstances whereby an interstate pipeline may curtail essential industrial process or feedstock use. No time requirement is placed on the issuance of this rule. It is our present intention to issue a Section 402 rule in this docket together with any other overall changes we make to the existing curtailment system.

Passage of the NGPA has also increased the availability of gas supplies to the interstate market. While the increasing availability of supplies will reduce interstate curtailment, it will not eliminate it entirely. Thus, maintenance of effective curtailment plans may prove important both to manage supplies in a shortage and to allocate efficiently the presently flowing, cheaper interstate gas. Additionally, it is important to insure that curtailment systems do not inhibit use of newly available gas supplies. In particular, oil displacement efforts which are initiated to cope with the cutoff of Iranian oil exports should not result in future gas curtailment penalties, should base periods be updated for end-use customers that displace oil with gas. In Issue 20, invite your comments on the need to amend the present system to facilitate such usage, and how best to assure fair recognition of oil displacement use of natural gas while maintaining the curtailment priority system's ability to manage a shortage.

The recent national energy legislation also provides the President with new emergency authorities affecting the use of natural gas in Sections 301-304 of the NGPA, Section 607 of the Public Utility Regulatory Policies Act of 1978 (Pub. L. 95-617) (PURPA), and Section 404 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95-620) (FUA). These authorities, while outside the scope of the curtailment priority system itself, must work in concert with it, and therefore how best to implement these authorities will be considered in this inquiry.

II. ERA'S REVIEW

It is ERA's responsibility to review the present curtailment priority system and to determine whether, and to what extent, modifications to that system are either required because of the NGPA or otherwise warranted. Time and effort have gone into the creation and refinement of the 467-B approach. We will not have to begin anew. Rather, we will review the present system in light of current conditions and the national energy legislation (particularly the NGPA) and will determine what must be done to carry out our responsibilities under the DOE Act in a manner which will best serve the public interest.

We are asking for public comments at this time in an effort to define further and analyze the major issues with respect to natural gas curtailments. It would be premature and inappropriate, however, to assume that our examination will necessarily lead to any proposals to change the present system beyond what is presently required by the NGPA. Further, we expect that our review will require the collection and analysis of data which are not now available concerning the impacts of curtailments at the end-user level, and that this work will not be completed prior to the end of 1979. We caution anyone against anticipating that the overall results of our work will soon be available. However, if circumstances warrant, we may determine to resolve some of the more pressing issues prior to completion of the overall effort.

III. OTHER RELATED ISSUES

There are certain other issues which are not part of the curtailment priority review but are related to our curtailment authorities, and we would like to use the opportunity provided by this inquiry to seek your comments on them.

(1) We would like comments on the relationship of ERA's authority to direct the use of natural gas imports to its overall authority to determine curtailment priorities.

(2) The recent national energy legislation assigns the President certain responsibilities in emergency natural gas situations, and we would like the benefit of your comments on how best to implement them.

These questions are more specifically addressed in Issues 1 through 6.

IV. ISSUES FOR COMMENT

The major issues which we believe should be addressed in this analysis are listed below. We welcome your views on any aspect of curtailment priorities, but in particular we request you address the following issues:

A. EMERGENCY AND OTHER AUTHORITIES AND THEIR RELATIONSHIP TO CURTAILMENT

1. The relationship of the new emergency authorities to curtailment and their use in conjunction with curtailment. These new authorities are in sections 301-304 of the NGPA, in section 607 of PURPA, and the natural gas portion of section 404 of the FUA.

2. The adequacy of the priority system, in conjunction with FERC's interim emergency sales provisions (18 CFR 157.45-53) and its curtailment emergency and extraordinary relief provisions (18 CFR 2.78(a) and (b) respectively), to manage severe, widespread curtailments at the level of those occurring in the 1976-1977

winter, or worse. Specifically, given these authorities, the new emergency authorities, and the provisions of 311(a), 311(b), and 312 of the NGPA which facilitate movement of interstate gas to interstate markets, is the existing system capable of handling severe short-term shortages as well as a more gradual long-term shortage? Apart from the priorities of service established in tariffs, is there any need to require pipelines to file additional contingency plans to protect high priority users, such as those which have been required by ERA in approving the import of liquefied natural gas? For instance, should contingency plans be required to specify sources of emergency supplies and emergency load management policies? Are there any other changes to the priority system that would both improve its ability to handle sudden severe shortages and not interfere with the system's ability to manage a long-term shortage?

3. The manner and extent to which ERA should exercise its authority to condition the imports of natural gas under Section 3 of the NGA. What conditions, if any, should be placed on the use of gas imports during periods of natural gas curtailment?

4. The administrative feasibility and usefulness of banning certain types of gas usage system-wide, for example, deliveries for boiler fuel use (or any other low-priority use), at any time when curtailment is imposed on higher priority end-use customers elsewhere on the same system. Would a ban on boiler fuel use discourage self-help measures? This issue is not intended to refer to treatment of low priority gas usage during a natural gas emergency. See Issue 6.

5. The proper curtailment treatment of gas used for on-site electric generation by consumers other than electric utilities. Should there be volumetric limitations on this use?

6. The manner in which DOE should implement the emergency natural gas authorities contained in sections 301 through 304 of the NGPA, section 607 of the PURPA, and section 404 of the FUA (natural gas only). For example, when an emergency was declared in the winter of 1977, the FPC issued generic procedural orders establishing the operational structure for the administration of the Emergency Natural Gas Act of 1977 and ordered companies to make direct purchases on a case-by-case basis. In implementing sections 301-304 of the NGPA, should the DOE issue a generic procedural rule, allowing DOE to issue orders on a case-by-case basis similar to the ones issued in the 1977 winter, or a specific order establishing criteria for emergency purchases and allocations? Should the order or rule be issued as a

standby regulation now and implemented on a case-by-case basis once an emergency is declared, or should the DOE wait until a natural gas supply emergency to issue the regulations?

In a declared natural gas supply emergency when the emergency sales authority of section 302 of the Natural Gas Policy Act has been exhausted, DOE is authorized to prohibit, by order, the burning of natural gas by major fuel-burning installations (MFBI's) and electric powerplants under section 607 of the Public Utility Regulatory Policies Act. Also, under section 404 of FUA, the President is authorized to issue an order banning the use of natural gas or petroleum by powerplants and MFBI's during an emergency declared pursuant to Section 3(8) of the Energy Policy and Conservation Act, in the event of a severe supply interruption.

Should there be any limit to the size of the MFBI or powerplants in which the use of gas is banned under either of these authorities? If so, what should it be? What factors determine whether a powerplant or MFBI can substitute petroleum for natural gas without damage to its facilities or equipment and without interference with operational requirements?

The DOE specifies both the duration of the order limiting natural gas use and the quantity or rate of use of natural gas that may be burned by an electric powerplant or MFBI during the period of the emergency. What criteria should be used by DOE to determine which facilities should be limited and what the quantity or rate of use should be? What are the criteria to be considered in determining when any action should be taken under these authorities?

B. NGPA IMPLICATIONS FOR CURTAILMENT

7. The manner and extent to which ERA can impose and refine the broad end-use priority system established by Sections 401, 402, and 403 of the NGPA without waiting for extensive new end-use data in view of (1) the immediate implementation requirements for Section 401 of the NGPA, and (2) the decision of the U.S. Court of Appeals for the District of Columbia in *State of North Carolina v. FERC*, 584 F. 2d 1003 (1978), which stated that the FERC in establishing an end-use curtailment plan for Transco "should, first, determine, and second, consider the impact of its opinion on ultimate users in the implementation" of such a plan. Assuming that to begin now to analyze actual end-use impacts to the extent possible with existing data, are the data and detailed analysis required for the establishment of an over-all priority system different from those data required for implementing that system on a specific pipeline?

8. Whether a distinction between service under "firm" and "interruptible" contracts can legally exist in any curtailment priority system for high priority, agricultural and industrial process and feedstock uses, in light of the NGPA. If so, should a distinction be made and for what reasons? Is there any reason to maintain this distinction for lower priority uses?

C. PLACEMENT AND TREATMENT OF NATURAL GAS USES IN THE PRIORITY SCHEME

9. The manner and extent to which broad curtailment categories, including specifically those established by Sections 401 and 402 of the NGPA, should be subdivided and ranked for curtailment purposes. For example, how should users in the "high priority users" category be ranked? Should they all be curtailed on a *pro rata* basis, or should the category be subdivided into separate priorities with individual residences accorded the highest priority, while small commercial establishments, apartment houses, schools and hospitals, and others would be ranked below in one or more separate priorities? Further, where should groups be placed which are excluded from the essential agricultural and industrial process and feedstock use categories because of alternate fuel determinations? Where should commercial facilities using more than 50 Mcf on a peak day be placed. Should large commercial facilities with alternate fuel capability be treated differently than those without such capability? How should such alternate fuel capability be defined and determined?

10. The proper priority treatment of storage injection gas. Essential agricultural users can be curtailed to make storage injections when necessary to protect the requirements of high-priority users. What effect will this have on the present treatment of storage injections in pipeline plans? Should a standard method of handling storage be adopted or should it be treated on a case-by-case basis?

D. PROCESS AND FEEDSTOCK DEFINITIONS

11. The adequacy of the definition of terms in the present priority system, with particular emphasis on the "process gas" definition. Specifically, what factors determine whether an industrial firm can substitute another fuel for gas and to what extent should these factors be built into the definition for process gas? How can we determine and monitor in a practicable manner the requirements for natural gas usage for different definitions? What data on process gas usage and the ability of specific industries to substitute other fuels for that usage exist except in individual end-use customers' records? What fuels can be substituted for natural gas used in specific processes? How

should the ability to substitute other fuels for natural gas be considered by ERA in certifying essential industrial process uses?

12. The definition of essential feedstock uses of natural gas. How can the natural gas requirements for these uses be determined and monitored in a practical manner? What data already exist? What fuels can be substituted for natural gas used for these feedstock uses? How should the ability to substitute other fuels for natural gas be considered by the Secretary in certifying essential industrial feedstock uses? Should this category be subdivided and ranked in some manner, or should users be curtailed on a *pro rata* basis?

13. To what extent should ERA, in certifying industrial process and feedstock requirements, considered the ability of individual or groups of users to contract for natural gas supplies outside of system supply, thereby releasing the use of system supply gas for lower priority use displacing oil? What criteria should be used to determine whether or not a user or group of users has access to off-system gas supplies?

E. BASE PERIOD FOR CURTAILMENT

14. The proper definition of "curtailment," or to the extent a curtailment is considered a reduction in deliveries from requirements, the proper definition of "requirements." What role should contract requirements play in this definition? Is there a need for setting a standard definition of curtailment that would offset the administrative difficulties for pipelines who must conform these definitions?

15. The proper relationship between curtailment and either additions of new direct and indirect customers on a pipeline system subject to curtailments or provisions for additional contract volumes for presently attached customers.

16. The need, if any, for establishment of a moving (a so-called rolling) or updated base period for requirements in place of the fixed base periods now in general use. The following represent a range of options available:

A. Retain the same base year customers but permit the end-use profiles to be updated to include the current requirements of those customers;

B. Move all fixed base periods to a more current base year such as 1975 or 1978, or an average of usage in a series of years, such as 1975 through 1978, including all customers and all their requirements being served in the selected years;

C. Impose a rolling base period such that all current customers' requirements would be included and updated every year for all interstate pipeline.

What would be the short and long range economic, environmental, and administrative impacts that can be expected for each of these options? How do they differ in terms of administrative feasibility?

17. If base periods are to be changed, in what administratively feasible manner can credit be given for volumes of gas conserved by customers (the "savers-keepers" concept provided for in Section 605 of PURPA)? How will this affect conservation and fuel switching practices discussed in Issue No. 19 or efforts to displace imports discussed in Issue No. 20?

F. DEVELOPMENT OF SUPPLEMENTAL SUPPLIES, NEW ENERGY SOURCES, AND REDUCTIONS IN OIL IMPORTS

18. The manner and extent to which the priority system can and should be constructed to encourage and facilitate development of supplemental gas supplies such as company-owned production, SNG produced from coal or LPGs, LNG, and other self-help measures. Should such supplemental gas volumes be treated as part of system supply for purposes of curtailment? How could we encourage the following kind of self-help measures by distribution companies or their customers:

A. The purchase of supplemental gas supplies directly from the producer or importer, or other, independent development of supplemental supplies; or

B. The purchase of supplemental gas supplies from interstate pipelines under a separate rate schedule; or

C. The purchase of gas on a rolled-in price basis from their interstate pipeline supplier when the pipeline has contracted for or developed its own supplemental gas supplies to augment its system supply?

19. The manner and degree to which the present priority system can and should be changed to maximize conservation and conversion to coal or other forms of more plentiful energy, e.g., solar heating. For instance, can and should facilities with a mix of gas and solar heating and/or coal be given higher priority than those using a gas and oil mix to encourage switching to non-imported fuels and to alleviate any environmental problems caused by switching to fuels such as domestic coal?

20. The manner and extent to which existing regulatory requirements of the FERC, ERA, or other Federal or State agencies contain impediments that might prevent persons from obtaining and using surplus gas to replace oil. To what extent and in what manner should ERA take steps to prevent persons who do switch from oil to surplus gas from being penalized for this effort during future periods of gas shortages?

G. SCOPE AND JURISDICTION OF THE FEDERAL CURTAILMENT AUTHORITY

21. The lawfulness, administrative feasibility, and usefulness of requiring any Federal curtailment priority policy or rule for interstate pipelines to be applied directly at the distribution company level. Assuming that legal authority exists, what would be the major problems if a curtailment priority system was adopted which applied to all gas systems nationwide?

22. The nature of the rules adopted pursuant to our review. How specific and binding should the rules be on both the FERC and the interstate pipelines? Should we impose a very tight rule binding on all parties or a more general and flexible rule which sets forth criteria and guidelines to be applied by the FERC? If we impose the latter, how do we avoid the long and costly hearings of past curtailment history? What would be the nature of a rule that could be applied to all pipelines? How could the resulting administrative problems be avoided?

V. COMMENT PROCEDURES

A. COMMENTS

You are invited to participate in this inquiry by submitting written data, views, or arguments with respect to the proposals set forth in this notice and other relevant curtailment priority matters to: Public Hearing Management, Economic Regulatory Administration, Room 2313, Docket No. ERA-R-79-10, 2000 M Street, NW., Washington, D.C. 20461. You may hand-deliver your comments to this room between 8:00 a.m. and 4:30 p.m., Monday through Friday; or you may mail your comments to the above address. You should submit fifteen copies and should include on the first page of each comment, and any envelope, the docket number and the designation "Curtailment Priorities Review." We will consider all comments received by 4:30 p.m. on May 31, 1979, and all other relevant information on our review of curtailment priorities. Please indicate the specific issue or issues you are addressing by number.

Any information you consider to be confidential must be so identified and submitted in one copy only. We reserve the right to determine the confidential status of the information and to treat it according to our determination.

ERA does not think public hearings are required at this preliminary stage in the priority review process. We will provide opportunities for hearings later once we have reviewed the written comments, prepared the required analyses, and published proposed rules.

Issued in Washington, D.C. March 13, 1979.

DAVID J. BARDIN,
Administrator, Economic
Regulatory Administration

ATTACHMENT

(1) Residential, small commercial (less than 50 Mcf on a peak day).

(2) Large commercial requirements (50 Mcf or more on a peak day), firm industrial requirements for plant protection, feedstock and process needs, and pipeline customer storage injection requirements.

(3) All industrial requirements not specified in (2), (4), (5), (6), (7), (8), or (9).

(4) Firm industrial requirements for boiler fuel use at less than 3,000 Mcf per day, but more than 1,500 Mcf per day, where alternate fuel capabilities can meet such requirements.

(5) Firm industrial requirements for large volume (3,000 Mcf or more per day) boiler fuel use where alternate fuel capabilities can meet such requirements.

(6) Interruptible requirements of more than 300 Mcf per day, but less than 1,500 Mcf per day, where alternate fuel capabilities can meet such requirements.

(7) Interruptible requirements of intermediate volumes (from 1,500 Mcf per day through 3,000 Mcf per day), where alternate fuel capabilities can meet such requirements.

(8) Interruptible requirements of more than 3,000 Mcf per day, but less than 10,000 Mcf per day, where alternate fuel capabilities can meet such requirements.

(9) Interruptible requirements of more than 10,000 Mcf per day, where alternate fuel capabilities can meet such requirements.

[FR Doc. 79-8317 Filed 3-19-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1078-6]

GRANTS FOR CONSTRUCTION OF TREATMENT WORKS INNOVATIVE AND ALTERNATIVE TECHNOLOGY ASSESSMENT MANUAL

Availability

This notice is published to advise the public of the availability of a draft Innovative and Alternative Technology Assessment Manual. The Manual has been prepared by the Environmental Protection Agency to assist in the administration of the Construction Grants Program for municipal wastewater treatment facilities.

Under the innovative and alternative technology provisions of the 1977

Clean Water Act, EPA is authorized to provide special incentives to those projects incorporating innovative or alternative techniques and processes. Briefly, these incentives include: (1) Increase in construction grants funding from 75 to 85 percent; (2) 15 percent cost preference in the cost-effectiveness analysis; (3) potentially higher priority for project funding; and (4) 100 percent funding for modifying or replacing any malfunctioning projects.

As part of the implementation of the innovative and alternative technology provisions, regulations and guidelines including criteria for evaluating projects proposed for funding as innovative and alternative technology have already been promulgated in the FEDERAL REGISTER (40 CFR Part 35, Subpart E; 43 FR 44022 Sept. 27, 1978). The Manual will supplement these regulations and guidelines. It contains detailed procedures and pertinent technical information. Also included as Appendix A of the Manual is a series of fact sheets providing technical, cost and energy data on over 100 unit treatment processes identified as presently known technology.

The manual will be used by the Environmental Protection Agency Regional Offices and the appropriate state agencies as a guide in evaluating grant applications involving innovative and alternative technology. The document will also be used by the municipalities and consulting engineers as guidance in the preparation of facility plans incorporating innovative and alternative technology processes. The public is encouraged to submit comments on the Manual to the Director, Municipal Construction Division (WH-547) Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. All comments must be received by 60 days from date of publication. For obtaining a copy of the draft manual and for further information, contact: Lam K. Lim, Municipal Technology Branch, Municipal Construction Division (WH-547), Environmental Protection Agency, Washington, D.C. 20460, 202/426-8976.

Dated: March 15, 1979.

THOMAS C. JORLING,
Assistant Administrator for
Water and Waste Management.
[FR Doc. 79-8358 Filed 3-19-79; 8:45 am]

[6560-01-M]

[FRL 1078-5; OTS-010003]

INTERAGENCY TOXIC SUBSTANCES DATA
COMMITTEE CURRENT MEMBERSHIP

Current Membership

AGENCY: Environmental Protection Agency (EPA), Office of Toxic Substances.

ACTION: Update of membership list and appointment of Executives Secretary.

SUMMARY: The intent of this notice is to update the membership list of the Interagency Toxic Substances Data Committee and to announce the appointment of a new Executive Secretary. A previous notice announcing the charter of the Committee, the Committee participants, and public meetings was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22776).

FOR FURTHER INFORMATION
CONTACT:

Mr. Roger M. Connor, Office of Toxic Substances (TS-793), EPA, 401 M St., S.W., Washington, D.C. 20460, telephone 202/755-6956.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency and the Council on Environmental Quality jointly established and co-chair the Interagency Toxic Substances Data Committee, in accordance with their statutory responsibilities under the Toxic Substances Control Act, sections 10(b)(1) and 25(b). These sections of the Act specifically recognize the need for interagency coordination with respect to chemical information collection, dissemination, and classification. Twenty-two Federal agencies and their components are represented on the Committee. Roger M. Connor has been appointed, effective January 9, 1979, to be the Executive Secretary for the Committee. The following is a current list of the Committee members. Future changes in the membership may be ascertained by contacting the Executive Secretary.

INTERAGENCY TOXIC SUBSTANCES DATA
COMMITTEE MEMBERSHIP LIST—FEBRUARY 1979

COCHAIRPERSONS

Marilyn C. Bracken, U.S. Environmental Protection Agency (TS-793), Washington, DC 20460, 202-755-8040.

Carroll Leslie Bastian, Council on Environmental Quality, Washington, DC 20006, 202-395-4980.

EXECUTIVE SECRETARY

Roger Connor, U.S. Environmental Protection Agency (TS-793), Washington, DC 20460, 202-755-6956.

MEMBERS

Captain Joseph D. Bloom, MC, USN (1), Commanding Officer (LCDR Lee Doptis—

Alternate) (2), Naval Medical Research and Development Command, Bethesda, Maryland 20014, (1) 301-295-1453, (2) 301-295-1028.

Patricia Breslin (Fred Clayton—Alternate, Room N 3629), OSHA/DOL, Room N 3700, 200 Constitution Ave., Washington, DC 20210, 202-523-7115.

George E. Cushmac, Materials Transportation Bureau (DMT-22), U.S. Department of Transportation, Washington, D.C. 20590, 202-755-4906.

Jerry Coffey, Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, Washington, D.C. 20230, 202-637-7953.

Terri Damstra (1) (Ray Shapiro—Alternate) (2) Office of Health Hazard Assessment, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (1) 919-629-3471, (2) 919-629-3506.

Robert Dixon (Carl Gerber—Alternate), Office of Science and Technology Policy, Washington, DC 20500, 202-456-6272.

Dorothy Drago (1) (Glenn Simpson—Alternate) (2), Consumer Product Safety Commission, Room 646, 5401 Westbard Avenue, Bethesda, Maryland 20207, (1) 301-492-6470, (2) 301-492-6647.

Margaret G. Pinarelli (Robert Mikulak—Alternate), U.S. Arms Control and Disarmament Agency, Washington, DC 20451, 202-632-0872.

Sidney R. Galler (1) (Bernard Greifer—Alternate) (2), U.S. Department of Commerce, Room 3425, Washington, DC 20230, (1) 202-377-4335, (2) 202-377-3234.

Allen Heim (1), Scientific Coordinator of Toxicology Programs, Room 11-40, Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857 (Robert A. Bell—Alternate) (2), 1901 Chapman Bldg., Room 212, Rockville, Maryland 20852, (1) 301-443-3773, (2) 301-443-3290.

Aimison Jonnard (1) (Edmund Cappuccilli—Alternate) (2), U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, (1) 202-523-0423, (2) 202-523-0387.

George Kelly (Gene Krug—Alternate), Department of Energy, Room 6134, 20 Massachusetts Avenue, Washington, DC 20545, 202-376-9073.

Henry Kissman (Donald Hummel—Alternate), National Library of Medicine, National Institutes of Health, 8600 Rockville Pike, Bethesda, Maryland 20014, 301-496-3147.

Richard J. Lewis, Sr. (1), National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 54226 (Vera W. Hudson—Alternate) (2), National Institute for Occupational Safety and Health, 5600 Fishers Lane, Room 8A-30, Rockville, Maryland 20857, (1) 513-684-8317, (2) 301-443-2100.

Calvin M. Menzie (1), Fish and Wildlife Service, Room 511, Matomic Bldg., U.S. Department of the Interior, Washington, DC 20241 (Raymond E. Corcoran—Alternate) (2), Bureau of Mines, U.S. Department of the Interior, Washington, DC 20241, (1) 202-632-5316, (2) 202-634-1313.

Robert S. Murphy (Kurt Maurer—Alternate), National Center for Health Statistics, 3700 East West Highway, Hyattsville, Maryland 20782, 301-436-7081.

William Rhode (1) (Leonore Wagner—Alternate) (2), National Institutes of Health, Building 31, Bethesda, Maryland 20014, (1) 301-496-9285, (2) 301-496-9291.

James Sontag (Kenneth Chu—Alternate), National Cancer Institute, National Institutes of Health, Building 31, Bethesda, Maryland 20014, 301-496-5108.

Gooloo S. Wunderlich (1), Office of the Assistant Secretary for Health, Department of Health, Education, and Welfare, Washington, DC 20201 (Jerry Calderone—Alternate) (2), Room 712-B HHH Bldg., 2nd and Independence Ave. S.W., Washington, D.C. 20201, (1) 202-472-7398, (2) 202-472-5194.

COMMITTEE REPRESENTATIVES

Carroll Leslie Bastian, Toxic Substances Strategy Committee, Council on Environmental Quality, Washington, DC 20006, 202-395-4980.

Patricia Breslin, Interagency Regulatory Liaison Group (IRLG), OSHA/DOL, Room N 3700, 200 Constitution Avenue, Washington, DC 20210, 202-523-7115.

Ray Shapiro (1), DHEW Committee to Coordinate Toxicology and Related Programs, NIEHS, NIH, P.O. Box 12233, Research Triangle Park, North Carolina 27709 (Henry Kissman—Alternate) (2), NLM, NIH, 8600 Rockville Pike, Bethesda, Maryland 20014, (1) 919-629-3506, (2) 301-496-3147.

OBSERVES

Sidney Siegel, EPA (TS-793), Washington, DC 20460, 202-755-8040.

Suzanne Rudzinski, EPA (TS-793), Washington, DC 20460, 202-426-8640.

Morris Yaguda, EPA (PM-218), Washington, DC 20460, 202-755-0811.

Dated: March 8, 1979.

MARILYN C. BRACKEN,
Cochairman, Environmental
Protection Agency.

Dated: March 8, 1979.

CARROLL LESLIE BASTIAN,
Cochairman, Council on
Environmental Quality.

[FR Doc. 79-8265 Filed 3-19-79; 8:45 am]

[6560-01-M]

[OPP-C30145A]

PESTICIDE PROGRAMS

Approval of Application to Conditionally Register Pesticide Product Containing New Active Ingredient

On April 24, 1978, notice was given (43 FR 17398) that Mobay Chemical Co., Chemagro Agriculture Div., PO Box 4913, Kansas City, MO 64120, had filed an application (EPA File Symbol No. 3125-GER) with the Environmental Protection Agency (EPA) to register the pesticide product BOLSTAR 6 EMULSIFIABLE INSECTICIDE con-

taining 64% of the active ingredient O-ethyl O-[4-(methylthio)phenyl] S-propyl phosphorodithioate and its cholinesterase inhibiting metabolites which was not previously registered at the time of submission. Notice of registration is given in accordance with 40 CFR 162.7(d)(2).

This application was approved February 14, 1979, and the product has been assigned the EPA Registration No. 3125-321. BOLSTAR 6 EMULSIFIABLE INSECTICIDE is classified for restricted use in the control of cotton bollworm and tobacco budworm in cotton. A copy of the approved label and list of data references used to support registration are available for public inspection in the office of the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, Rm. 401 East Tower, 401 M St., SW, Washington DC 20460. The data and other scientific information used to support registration, except for the material specifically protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) will be available for public inspection in accordance with Section 3(c)(2) of FIFRA, within 30 days after the registration date of February 14, 1979. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, 401 M St., SW, Washington DC 20460. Such request should: (1) Identify the product by name and registration number and (2) specify the data or information desired.

Dated: March 15, 1979.

EDWIN L. JOHNSON,
Deputy Assistant Administrator
for Pesticide Programs.

[FR Doc. 79-8356 Filed 3-19-79; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

(Docket No. 20814)

AMERICAN TELEPHONE AND TELEGRAPH CO.

Charges for Private Line Services, Revision of Tariff FCC No. 260 (Series 2000/3000), filed with Transmittal Nos. 12546 and 12716; Memorandum Opinion and Order.

Adopted: March 13, 1979.

Released: March 14, 1979.

1. By Public Notice, dated September 14, 1977, certain individuals were designated members of the Common

Carrier Bureau's separated Trial Staff pursuant to Section 1.1209 of the Commission's Rules in connection with Docket No. 20814 (See 43 FR 30616). Walter G. Bolter was among those so designated.

2. At no time during the pendency of Docket No. 20814 has Dr. Bolter actively participated with or served in an ongoing or significant advisory capacity for the Trial Staff. As recently appointed Chief of the Common Carrier Bureau's Economic Division, it is necessary that Dr. Bolter be restored the status of decision-making Commission Personnel. In view of his lack of trial staff participation in Docket No. 20814, this action will not prejudice any party to that proceeding.

3. Accordingly, Walter G. Bolter is no longer a member of the Common Carrier Bureau's separated Trial Staff for Docket No. 20814.

LARRY F. DARBY,
Chief, Common
Carrier Bureau.

[FR Doc. 79-8327 Filed 3-19-79; 8:45 a.m.]

[6820-24-M]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs.,
Temporary Reg. E-60]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the interests of the executive agencies of the Federal Government in a rate increase proceeding.

2. *Effective date.* This regulation is effective immediately.

3. Delegation.

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Pennsylvania Public Utility Commission involving the application of the West Penn Power Company for a 19.5 percent rate increase.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: February 23, 1979.

JAY SOLOMON,
Administrator of General Services.
[FR Doc. 79-8285 Filed 3-19-79; 8:45 am]

[4110-02-M]

**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE**

Office of Education

**NATIONAL ADVISORY COUNCIL ON
WOMEN'S EDUCATIONAL PROGRAMS**

Meeting

AGENCY: Office of Education, National Advisory Council on Women's Educational Programs.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Women's Educational Programs and its Executive, Federal Policy, Practices and Programs, Civil Rights, WEEA Program, and Public Information Committees. It also describes the functions of the Council. Notice of the meeting is required pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). This document is intended to notify the general public of their opportunity to attend.

DATE: April 3, 1979, 7:30 p.m. to 10:00 p.m.; April 4-April 5, 8:30 a.m. to 5:30 p.m.; April 6, 8:30 a.m. to 12:00 noon.

ADDRESS: 1832 M Street, N.W., Suite 821, Washington, D.C. 20036.

**FOR FURTHER INFORMATION
CONTACT:**

Laura R. Summers, National Advisory Council on Women's Educational Programs, 1832 M Street N.W., #821, Washington, D.C. 20036, (202) 653-5846.

The National Advisory Council on Women's Educational Programs is established pursuant to Public Law 95-561. The Council is mandated to (a) advise the Secretary, Assistant Secretary, and the Commissioner on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Commissioner with respect to the allocation of any funds pursuant to that Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President

and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The meeting of the Executive Committee will take place on April 3, 1979 from 7:00 p.m. to 10:00 p.m. The agenda will include plans for the Council meeting as well as internal personnel matters. From 9:00 p.m. to 10:00 p.m. the meeting will be closed to the public for the personnel matters. This portion of the meeting will touch upon matters which would constitute a serious invasion of privacy if conducted in an open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c), Title V, U.S.C. The 9:00 p.m. to 10:00 p.m. session will therefore be closed to the public as provided in Section 10(d) of the Federal Advisory Committee Act.

The meeting of the Federal Policy, Practices and Program Committee, the Civil Rights Committee, and the WEEA Program Committee will take place on April 4, 1979 from 8:30 a.m. to 5:00 p.m.

The agenda for the Federal Policy, Practices, and Programs Committee will include planning and developing procedures in carrying out a study on the degree to which sex equity provisions in vocational education regulations are being implemented.

The agenda for the Civil Rights Committee will include discussion of matters concerning Title IX of the Education Amendments of 1972 and Title IV of the 1964 Civil Rights Act.

The agenda for the Program Committee will include plans for future site visits to WEEA projects.

The meeting of the National Advisory Council on Women's Educational Programs will take place from 8:30 a.m. to 5:00 p.m. April 5, and from 8:30 a.m. to 12:00 p.m. on April 6, 1979. The agenda will include reports of the Executive Director and the Women's Program Staff and recommendations of standing Committees.

The meetings of the Council will be open to the public except for the 9:00 p.m. to 10:00 p.m. session of the Executive Committee on April 3. Records will be kept of the proceedings and will be available for public inspection. A summary of the activities at the closed session which are informative to the public consistent with the policy of Title V, U.S.C. 552b(c) will be available to the public within fourteen days of the April 3 closed session.

Signed at Washington, D.C. on March 13, 1979.

JOY R. SIMONSON,
Executive Director.

[FR Doc. 79-8304 Filed 3-19-79; 8:45 am]

[4110-03-M]

Food and Drug Administration

[Docket No. 79F-00161]

HENKEL INC.

Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Henkel Incorporated has filed a petition proposing that the food additive regulations be amended to provide for the safe use of pentaerythritol adipate-stearate as a lubricant in the fabrication of rigid and/or semirigid polyvinyl chloride and/or polyvinyl chloride copolymers used as components of articles intended for contact with food.

**FOR FURTHER INFORMATION
CONTACT:**

John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B-3383) has been filed by Henkel Incorporated, 480 Alfred Ave., Teaneck, NJ 07666, proposing that the food additive regulations be amended to provide for the safe use of pentaerythritol adipate-stearate as a lubricant in the fabrication of rigid and/or semirigid polyvinyl chloride and/or polyvinyl chloride copolymers used as components of articles intended for contact with food.

The agency has determined that the proposed action falls under § 25.1(f)(1)(v) (21 CFR 25.1(f)(1)(v)) and is exempt from the need for an environmental impact analysis report, and that no environmental impact statement is necessary.

Dated: March 12, 1979.

SANFORD A. MILLER,
Director, Bureau of Foods.

[FR Doc. 79-8273 Filed 3-19-79; 8:45 am]

[4110-03-M]

[Docket No. 78P-02871]

WIEN LABORATORIES, INC.

Panel Recommendation on Petition for
Reclassification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency is publishing for public comment the recommendation of the Clinical Toxicology Section of the Clinical Chemistry and Hematology Device Classification Panel that the Tri-Cy Test Set not be reclassified from class III (premarket approval) into class II (performance standards). This recommendation was made after review of a reclassification petition filed by Wien Laboratories, Inc., Succasunna, NJ 07876, under section 513(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(f)). After reviewing the Panel recommendation and any public comments received, the agency will approve or deny the reclassification by order in the form of a letter to the petitioner. The agency's decision on this reclassification petition will be announced in the **FEDERAL REGISTER**.

DATE: Comments by April 19, 1979.

ADDRESS: Written comments (preferably four copies) to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

S. K. Vadlamudi, Bureau of Medical Devices (HPK-440), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7234.

SUPPLEMENTARY INFORMATION: On July 5, 1978, Wien Laboratories, Inc., Succasunna, NJ 07876, submitted to the Food and Drug Administration (FDA) a premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)) stating that it intended to market a radioimmunoassay kit for the determination of tricyclic antidepressant drugs, a device the manufacturer calls "TriCy Test Set." After reviewing the information in the premarket notification, the Commissioner of Food and Drugs determined that the device is not substantially equivalent to any device that was in commercial distribution before May 28, 1976; nor is the device substantially equivalent to a device that has been placed in commercial distribution since that date and subsequently reclassified. Upon this determination, the device is automatically classified into class III under section 513(f)(1) of the act.

Under section 515(a)(2) of the act (21 U.S.C. 360e(a)(2)), before a device that is in class III under section 513(f)(1) of the act can be marketed, it must either be reclassified under section 513(f)(2) of the act or have an approval of an application for premarket approval under section 515 of the act, unless there is in effect for the device

an investigational device exemption under section 520(g) of the act (21 U.S.C. 360j(g)).

On August 14, 1978, Wien Laboratories, Inc., submitted to FDA a reclassification petition for the device under section 513(f)(2) of the act. Section 513(f)(2) of the act requires the Commissioner to refer a reclassification petition to the appropriate classification panel and to receive a recommendation on whether to approve or deny the petition within 90 days after referral. The act also requires FDA to provide an opportunity for interested persons to submit data and views to the panel. The Food and Drug Administration ordinarily meets the latter requirement by scheduling an open panel meeting on the petition. In this case, the agency believed that a meeting of the Clinical Toxicology Section of the Clinical Chemistry and Hematology Device Classification Panel could not be scheduled so as to enable the Panel to make its recommendation within the required 90-day period. Consequently FDA sought to obtain the Panel's recommendation by mailing copies of the petition to voting Panel members. The agency also published in the **FEDERAL REGISTER** of September 29, 1978 (43 FR 44889), a notice inviting interested persons to submit data, information, and views for consideration by the Panel. The notice stated that any data, information, and views submitted by October 30, 1978, would be mailed to the Panel members for their consideration before recommendations were made. No data, information, and views were submitted. However, at an open Panel meeting on November 8, 1978, the Clinical Toxicology Section of the Clinical Chemistry and Hematology Device Classification Panel reviewed the petition and recommended that the device not be reclassified into class II.

In determining the proper classification of the device, the Panel considered the criteria in section 513(a)(1) of the act. For the purpose of classification, the Panel assigned to this generic type of device the name "radioimmunoassay for tricyclic antidepressant drugs" and described this type of device as test kits used to detect and quantitate imipramine, desipramine, amitriptyline, nortriptyline, protriptyline, or doxepin in human serum.

SUMMARY OF THE REASONS FOR THE RECOMMENDATION

The Panel made the following determinations in support of its recommendation:

1. The device is not an implant. The device is not life supporting nor life sustaining but presents a potential unreasonable risk of illness or injury. Insufficient scientific and medical data

exist to determine that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide such assurance at this time.

2. Hazards to life or good health may result from the use of information derived from the device when it does not perform properly.

The Food and Drug Administration believes that the device is purported or represented to be for a use (determining levels of antidepressant drugs) which is of substantial importance in preventing impairment of human health.

SUMMARY OF DATA ON WHICH THE RECOMMENDATION IS BASED

The Panel stated that because of lack of specificity of the antibody and the lack of standardization, the test cannot quantitate accurately the total tricyclic level in patients taking the tertiary amine drugs, amitriptyline, or imipramine, because the active metabolite is present in high concentration. The Panel noted that there is not a good correlation between the radioimmunoassay method and the reference gas liquid chromatography (GLC) method for many spiked samples. Also, the supporting data do not conclusively demonstrate effective performance. The clinical studies performed were not carefully controlled. For example, the studies do not control for placebo effect or effects of interfering drugs. For the drugs desipramine and doxepin, only 13 and 15 samples, respectively, were tested; the numbers of samples used were too small to permit statistical analysis of test results. In addition, the manufacturer did not provide data to demonstrate that plasticizers released from the stoppers of collection tubes do not cause erroneous test results. Plasticizers are competitors of tricyclic antidepressant drugs for α -1-glycoprotein in serum and can cause significant error.

ADDITIONAL FINDINGS

The Panel noted that there is a risk of inaccurate results from the use of the device that may lead to improper treatment of chronic depression. Inaccurate results may arise from the device's lack of specificity and sensitivity.

Some of the tricyclic antidepressant drugs are maximally effective only within a narrow range. They are ineffective if the dose is too low. If the dose is above the therapeutic range, the drug may also be ineffective, and/or may negatively affect the patient's depression.

The petition and transcript of the Panel meeting are on file in the office

of the Hearing Clerk, address noted above.

Dated: March 13, 1979.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Regulatory Affairs.

[FR Doc. 79-8274 Filed 3-19-79; 8:45 am]

[4110-84-M]

Health Services Administration

PROJECT GRANTS FOR FAMILY PLANNING TRAINING

Announcement of Availability of Assistance Under the Public Health Service Act

The Health Services Administration announces that competitive applications are now being accepted for grants for fiscal year 1979 for general family planning training projects. These grants are authorized by Section 1003(a) of the Public Health Service Act (42 U.S.C. 300a-1(a)) which authorizes the Secretary of Health, Education, and Welfare to make grants to public or nonprofit private entities to provide training for personnel to carry out family planning service programs described in Section 1001 of the Public Health Service Act (42 U.S.C. 300). The amount available for the family planning training grants under this announcement is \$1,265,000.

The Secretary will make grants to eligible applicants to assist in the establishment and operation of projects which will promote the purposes of Section 1003 of the Act, taking into account the degree to which the project meets the requirements of the regulations (See 42 CFR 59.205 and 59.206).

Applications are invited for the following 10 grants:

One training grant for DHEW Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont);

One training grant for DHEW Region II (New Jersey, New York, Puerto Rico, and Virgin Islands);

One training grant for the States of Indiana and Michigan;

One training grant for the State of Illinois;

One training grant for the State of Minnesota;

One training grant for DHEW Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas);

One training grant for DHEW Region VII (Iowa, Kansas, Missouri, and Nebraska);

One training grant for DHEW Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming);

One training grant for DHEW Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Trust Territory of the Pacific Islands, and Guam); and

One training grant for DHEW Region X (Alaska, Idaho, Oregon, and Washington).

Applicants may apply for as many of the 10 grants as they desire; however, a separate application is required for each grant.

Application kits, including all necessary forms, instructions, and information relating to the grant applications may be obtained upon written request from: Grants Management Branch, Bureau of Community Health Services, Health Services Administration, 5600 Fishers Lane, Room 6-49, Rockville, Maryland 20857.

Consultation and technical assistance regarding development of an application are available from the staff of the Office for Family Planning, 5600 Fishers Lane, Room 7-49, Rockville, Maryland 20857.

Completed applications for DHEW Regions VII, VIII, and X, and for Indiana and Michigan must be received by June 12, 1979. Completed applications for DHEW Regions I, II, VI, and IX, and for Illinois and Minnesota must be received by July 2, 1979. Completed applications should be submitted to the Grants Management Branch at the above address.

Dated: March 14, 1979.

GEORGE I. LYTHCOTT,
Administrator,
Health Services Administration.

[FR Doc. 79-8284 Filed 3-19-79; 8:45 am]

[4110-39-M]

National Institute of Education

PROGRAM OF RESEARCH GRANTS ON LAW AND GOVERNMENT STUDIES IN EDUCATION

Closing Dates for Receipt of Applications

Notice is given that applications are being accepted for grants in the Program of Research Grants on Law and Government Studies in Education according to the authority contained in Section 405 of the General Education Provisions Act, as amended (20 U.S.C. 1221e).

This announcement covers applications for new awards that are to be considered in Fiscal Year 1979. Awards will be made for research on how legislative, administrative, and judicial policies and governmental organizations affect education.

A college, university, State or local educational agency, or other public or private non-profit or for-profit agency,

organization, or group, or an individual is an eligible applicant. A grant to a for-profit organization is subject to any special conditions that the Director may prescribe.

A. Application and Program Information: Persons who wish to receive the program announcement may request one by sending a self-addressed mailing label to the Legal and Governmental Studies Team, EPO, National Institute of Education, Washington, D.C., 20208 (202-254-6070).

The program announcement includes the guidelines governing the program, information on the availability of funds, expected number of awards, eligibility and review criteria, and instruction on how to apply. Prospective applicants who have previously requested that their names be placed on the mailing list for this program will be sent copies of the announcement as soon as it is available.

This program will cover two types of grants: Major grants and small grants. A major grant is for a project in excess of \$10,000 in direct costs. A project supported by a major grant under this Program may be up to three years in duration. However, initial funding for major grants will, in most cases, not exceed 12 months. Applications for major grants that propose a multi-year project must be supported by an explanation of the need for multi-year support, an overview of the objectives and activities proposed, and the budget estimates necessary to attain the objectives in any years subsequent to the first year of the project.

A small grant is for a project no longer than 12 months duration and for an amount that does not exceed \$10,000 plus indirect costs.

Closing dates for proposal for small grants: April 12, 1979; August 2, 1979.

Applications for a major grant are made in a two-stage process. An applicant for a major grant must first submit a preliminary proposal; following this, an applicant may submit a full proposal only after receipt of NIE comments on the preliminary proposal. The consideration of a preliminary proposal is intended to enhance the acceptability of the full proposal and discourage submission of proposals having little chance of award. However, no applicant who has submitted a preliminary proposal will be denied the opportunity to present a full proposal.

Closing date for preliminary proposals for major grants: April 12, 1979.

Applications for a small grant do not require a preliminary proposal. All that is required is a single proposal.

B. Estimated Distribution of Program Funds: Current estimates are that approximately \$400,000 will be available in the first funding cycle to fund projects under this program.

However, only projects of the highest quality will be supported, whether or not the resources of the program are exhausted. Further, nothing in the program announcement should be construed as committing NIE to award any specific amount. Approximately 10-15% of the funds will be reserved for small grants. Based on past experience, NIE projects that 3-5 major grants and 5-10 small grants will be awarded in the first funding cycle. The total amount allocated to these grants may be increased or decreased by the Director of NIE, based on the merits of grant applications received.

c. Applications Delivered by Mail: The use of certified mail, for which a receipt can be obtained, is strongly recommended for mailed application packages. The package should be securely wrapped and addressed as follows: Proposal Clearinghouse, Room 813, National Institute of Education, 1200 19th Street NW., Washington, D.C. 20208. In the lower left hand corner of the package, include the words: "Law and Government Studies", and the type of proposal: "Preliminary", "Full", or "Small". Applications will be accepted only if they are mailed on or before the closing date and the following proof of mailing is provided. Proof of mailing consists of a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of mailing stamped by the U.S. Postal Service. Private metered postmarks or mail receipts will not be accepted without a legible date stamped by the U.S. Postal Service.

NOTE:—The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.

Each applicant whose application does not meet the deadline date described above will be notified that the late application will not be considered in the current competition but will be held over for consideration in the next one.

D. Applications Delivered by Hand: An application that is hand-delivered must be taken to the Proposal Clearinghouse, National Institute of Education, Room 813, 1200 19th Street NW., Washington, D.C. The Proposal Clearinghouse will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications for new awards that are hand delivered will not be accepted after 4:30 p.m., April 12, 1979, for the current review cycle, but will be considered in the next round of the competition.

E. Applicable Regulations: The regulations applicable to this program include the National Institute of Education General Provisions Regulations (45 CFR Part 1400-1424) published in

the FEDERAL REGISTER on November 4, 1974, 39 FR 38992, and the Interim Final Regulations for the Research Grants Program on Law and Government Studies in Education (45 CFR Part 1495), which are pending publication in the FEDERAL REGISTER on or about April 2, 1979.

(Catalog of Federal Domestic Assistance Number 13.950, Educational Research and Development)

Dated: March 15, 1979.

PATRICIA ALBJERG GRAHAM,
Director, National
Institute of Education.

[FR Doc. 79-8331 Filed 3-19-79; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. NFD-667; FDAA-572-DR]

MARSHALL ISLAND DISTRICT (TRUST TERRITORY OF THE PACIFIC ISLANDS)

Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of major disaster declaration for the Marshall Islands District (Trust Territory of the Pacific Islands) (FDAA-572-DR), dated February 12, 1979.

DATE: February 25, 1979.

FOR FURTHER INFORMATION CONTACT:

John Perry, Program Support Staff,
Federal Disaster Assistance Administration,
Department of Housing and
Urban Development, Washington,
D.C. 20410 (202/634-7825).

NOTICE: This Notice of major disaster for the Marshall Islands District (Trust Territory of the Pacific Islands) dated February 12, 1979, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 12, 1979.

Enewetak Island
Medren Island

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

WILLIAM N. WILCOX,
Administrator, Federal Disaster
Assistance Administration.

[FR Doc. 79-8291 Filed 3-19-79; 8:45 am]

[4310-02-M]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

MOUNT TOLMAN COPPER-MOLYBDENUM MINE

Intent To Prepare an Environmental Statement and Scoping Meeting

The Department of the Interior, Bureau of Indian Affairs, Portland Area Office, will be preparing an environmental impact statement on a proposal to develop a Copper-Molybdenum mine and milling facilities at Mt. Tolman approximately two miles southwest of Keller, Washington, on the Colville Indian Reservation. The Colville Confederated Tribes and AMAX Incorporated have been involved in developing the proposal.

If initiated, the proposal will require approval of a mining lease. Information obtained for the EIS will assist BIA line officials in making a Federal decision concerning the lease. The environmental statement will address mining, alternative waste, mill, tailing and other support facility site locations as well as effects of such a development on the Colville Indian Reservation community and the related eastern Washington area.

Initial issues and concerns have been identified through a series of public meetings in each District on the Colville Reservation and with a number of public agencies at a meeting in Spokane, Washington, on January 25, 1979. District meetings are continuing on a monthly basis.

Pursuant to the Council on Environmental Quality National Environmental Policy Act regulations, Sections 1501.7(a)(1), 1506.6 and 1508.22, a public meeting will be held for the purpose of additional scoping (determining the scope of issues to be addressed, and for identifying the significant issues related to the proposed action) for the environmental statement. The meeting will be on April 26, 1979, at 11:00 a.m. in the Keller Community Center at Keller, Washington.

Interested parties may attend this meeting or submit written comments to this office.

For further information concerning the meeting, the proposed action, or the environmental impact statement, contact: Jack Hunt, Environmental Coordinator, Portland Area Office, Bureau of Indian Affairs, P.O. Box 3785, Portland, Oregon 97208. Telephone number 503-231-6748.

VINCENT LITTLE,
Area Director.

MARCH 12, 1979.

[FR Doc. 79-8312 Filed 3-19-79; 8:45 am]

[4310-84-M]

Bureau of Land Management

BURLEY DISTRICT GRAZING ADVISORY BOARD

Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Burley District Grazing Advisory Board will be held on April 26, 1979. The meeting will begin at 9:30 a.m. in the Conference Room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho. The agenda for the meeting will include:

(1) The expenditure of range betterment and advisory board funds for range improvements;

(2) Proposals for revision of the Goose Creek AMP;

(3) The arrangement for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 2:30 p.m. and 4:00 p.m., or written statements may be filed for consideration by the Board. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318, by April 20, 1979. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproductions (during regular business hours 7:45 a.m. to 4:30 p.m., Monday through Friday) within 30 days following the meeting.

NICK JAMES COZAKOS,
District Manager.

MARCH 12, 1979.

[FR Doc. 79-8313 Filed 3-19-79; 8:45 am]

[4310-03-M]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before March 9, 1979. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic

Preservation, U.S. Department of the Interior, Washington, DC 20240. Written comments or a request for additional time to prepare comments should be submitted by March 30, 1979.

WILLIAM J. MURTAGH,
Keeper of the National Register.

ALABAMA

Marengo County

Demopolis, *Demopolis Historic Business District*, roughly bounded by Capital and Franklin Sts., Desnonette and Cedar Aves.

ARIZONA

Cochise County

Dragoon vicinity, *Dragoon Springs Stage Station Site*, E of Dragoon

CONNECTICUT

New London County

Mystic, *Requiospos Manor (Denison Homestead)* Pequitospos Rd.

FLORIDA

Walton County

DeFuniak Springs, *Sun Bright (Sidney Johnston Catts House)* 606 Live Oak Ave.

IDAHO

Oneida County

Malad City, *Co-op Block and J. N. Ireland Bank*, Main and Bannock Sts.

IOWA

Chickasaw County

New Hampton, *Foley, John, House*, 511 N. Locust St.

Hardin County

Iowa Falls, *Edgewood School of Domestic Arts (Edgewood Community Center)* 719 River St.

Scott County

Le Claire, *Cody Road Historic District*, irregular pattern along Cody Road

KENTUCKY

Bracken County

Chatham vicinity, *Bracken County Infirmary*, NE of Chatham on KY 19

Christian County

Hopkinsville, *Crockett, Judge Joseph, House (Lone Oak)*, 317 E. 16th St.

Leslie County

Wootton, *Wootton Presbyterian Center*, KY 80

Lincoln County

Stanford vicinity, *Swope-Dudderar House and Mill Site*, E of Stanford on Goshen Rd.

McCracken County

Paducah, *St. Francis deSales Roman Catholic Church*, 116 S. 16th St.

Trigg County

Cadiz, *Cadiz Masonic Lodge No. 121 F. and A. M.*, Jefferson and Monroe Sts.

LOUISIANA

Assumption County

Plattenville, *Church of the Assumption of the Blessed Virgin Mary*, LA 308

Concordia Parish

Vidalia, *Campbell, Sheriff Eugene P., House*, 2 Concordia Ave.

East Baton Rouge Parish

Baton Rouge, *Reilly-Reeves House*, 810 Park Blvd.

Ouachita Parish

Bosco, *Boscobel Cottage*, Cordell Lane
Monroe, *Hall, Gov. Luther, House*, 1515 Jackson St.

Pointe Coupee Parish

New Roads, *St. Francis Chapel*, NW of New Roads on LA 10

MAINE

Androscoggin County

Auburn, *Barker Mill*, 143 Mill St.
Auburn, *First Universalist Church*, Elm and Pleasant Sts.
Lewiston, *Grand Trunk Railroad Station*, Lincoln St.

Cumberland County

Brunswick, *Dunlap, John, House*, 4 Oak St.
Harpwell, *Merriconegan Farm*, ME 123
Portland, *Maine Archeological Survey Site No. 9-16*
Yarmouth, *Blanchard, Capt. S. C., House*, 46 Main St.

Franklin County

Farmington vicinity, *Tufts House*, SE of Farmington on U.S. 2

Hancock County

Brooklin, *Goddard Site*

Kennebec County

Gardiner, *Richards, Laura, House*, 3 Dennis St.
Kent's Hill, *Kent's Hill School Historic District*, ME 17

Knox County

Cushing vicinity, *King, Thomas, Inscription*, SW of Cushing

Lincoln County

Newcastle, *Second Congregational Church*, River St.

Oxford County

Fryeburg, *Chase, Squire, House*, 151 Main St.

Piscataquis County

Greenville, *Tramway Historic District*, NE of Greenville

Washington County

Calais, *Gilmore House*, 316 Main St.

NOTICES

MICHIGAN

Genesee County

Flint, Applewood Charles Stewart Mott House, 1400 E. Kearsley St.

MINNESOTA

Wright County

Wright County Multiple Resource Area, various locations in Wright County (also in Hennepin County)

NEW YORK

Columbia County

Germantown vicinity, Clermont Estates Historic District, S of Germantown

Erie County

Hamburg vicinity, Kleis Site, NE of Hamburg

Ulster County

Woodstock vicinity, Byrdcliffe Historic District, W of Woodstock at Glasco Tpke. and Larks Nest Rd.

OKLAHOMA

Kay County

Newkirk vicinity, Bushyhead Quarry, N of Newkirk
Ponca City, Mooney-White House, 1001 W. Grand Ave.

Lincoln County

Cushing vicinity, Only Way Missionary Baptist Church, SE of Cushing on OK 99

Noble County

Red Rock vicinity, Otoe-Missouria Indian Agency Site, NE of Red Rock off U.S. 177

Osage County

Grayhorse, Grayhorse Indian Reserve, off OK 18

Hominy, Missouri-Kansas-Texas Railway Station, Main St. and Katy Ave.

Hominy, Mullins House, 203 S. Wood St.
Pawhuska, Blacksmith's House, 210 W. Main St.

Pawhuska, Osage Superintendent's House, 621 Grandview Ave.

Pawnee County

Pawnee, Cortiss Steam Engine, Pawnee County Fairgrounds

Skedee, Santa Fe Coal Tower, at Atchison, Topeka and Santa Fe RR track

Payne County

Ripley vicinity, Hopkins Sandstone House and Farmstead, NE of Ripley

TENNESSEE

Grundy County

Altamont vicinity, Northcutts Cove Chapel, SE of Altamont

TEXAS

Galveston County

Galveston, Galvez Hotel, 2024 Seawall Blvd.

UTAH

Daguer County

Dutch John vicinity, Sweet Ranch, NE of Dutch John

VIRGINIA

Emporia (independent city)

Old Merchants and Farmers Bank Building, S. Main St.

Loudoun County

Hillsboro, Hillsboro Historic District, VA 9

Orange County

Orange vicinity Willow Grove, 2 mi. (3.2 km) NW of Orange on U. S. 15

Pulaski County

Pulaski, Dalton Theatre Building, Washington Ave.

Shenandoah County

Fishers Hill, Snapp House, SW of Fishers Hill on VA 757

Tazewell County

Burke's Garden vicinity, Burke's Garden Central Church and Cemetery, SE of Burke's Garden on VA 623

WISCONSIN

Green County

Brodhead, Smith, Francis West, House, 1002 W. 2nd Ave.

[FR Doc. 79-7962 Filed 3-19-79; 8:45 am]

[4310-03-M]

Heritage Conservation and Recreation Service

CONSULTING COMMITTEE TO THE NATIONAL SURVEY OF HISTORIC SITES AND BUILDINGS

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Consulting Committee on Potential National Historic Landmarks will be held at 9:00 a.m. E.S.T. on April 19-20, in Room 338 in the Pension Building, 440 G Street NW., Washington, D.C.

The purpose of the Consulting Committee is to evaluate studies of potential national historic landmarks. Recommendations of the Committee are forwarded by the Director of the Heritage Conservation and Recreation Service to the Secretary of the Interior for final review and decision. Properties designated landmarks by the Secretary are automatically entered on the National Register of Historic Places.

The members of the Consulting Committee are:

Dr. Richard H. Howland, Special Assistant to the Secretary, Smithsonian Institution.

Dr. Robert M. Utley, Deputy Execu-

tive Director, Advisory Council on Historic Preservation.

Dr. Marvin Krantz, Specialist for American History, Library of Congress.

Dr. Janet Friedman, U.S. Forest Service, Department of Agriculture.

Mr. Joseph Howerton, Head of Reference, Social and Industrial Branch, National Archives.

Dr. Ronald Overton, National Science Foundation.

Dr. Jack Goodwin, Bibliographer for the History of Science and Technology, Smithsonian Institution.

Dr. Anne Radice, Architectural Historian for the Architect of the Capitol.

Properties to be evaluated are listed at the end of this notice by name and location.

The meeting will be open to the public. However, facilities and space for accommodating the public are limited. It is expected that not more than 10 persons will be able to attend the sessions. Any member of the public may file no later than April 16 with the Consulting Committee a written statement on the subjects to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Mr. George F. Emery, Heritage Conservation and Recreation Service, Department of the Interior, Pension Building, 440 G Street NW., Washington, D.C. 20243; or telephone directly at 202-343-6404. Minutes of the meeting will be available for public inspection six weeks after the meeting in Room 137-B, Heritage Conservation and Recreation Service, Department of the Interior, Pension Building, 440 G Street NW., Washington, D.C. 20243.

Dated: March 15, 1979.

CHRIS THERRAL DELAPORTE,
Director.

PROPERTIES TO BE EVALUATED

A. COMMERCE AND INDUSTRY

1. Factors and Commission Merchants Historic District, Charleston, South Carolina
2. Factors Walk Historic District, Savannah, Georgia
3. Factors Row, New Orleans, Louisiana
4. American Express Company Building, New York, New York
5. N. W. Ayer and Son Building, Philadelphia, Pennsylvania
6. Rogers Locomotive and Machine Works, Paterson, New Jersey
7. Lima Locomotive Works Erecting Shop, Lima, Ohio
8. San Francisco Yard, San Francisco, California
9. Newport News Shipbuilding and Dry Dock Company Shipyard, Newport News, Virginia

10. Tremont Nail Factory District, Wareham, Massachusetts
11. Collinsville Historic District, Collinsville, Connecticut
12. Colt Industrial District, Hartford, Connecticut
13. Francis A. Pratt and Amos Whitney Houses, Hartford, Connecticut
14. Brown and Sharpe Manufacturing Company Complex, Providence, Rhode Island
15. Singer Company Factory Building, Elizabeth, New Jersey
16. Worthington Pump Company Complex, Harrison, New Jersey
17. W & L E. Gurley Building, Troy, New York
18. American Optical Administration Building, Southbridge, Massachusetts
19. Sperry Gyroscope Company Building, Brooklyn, New York
20. National Cash Register Schoolhouse, Dayton, Ohio
21. Rubicon Farm, Dayton, Ohio
22. IBM Manufacturing and Engineering Complex, Endicott, New York
23. Captain John B. Ford House, New Albany, Indiana
24. Edward D. Libbey House, Toledo, Ohio
25. Snyder Natural Cement Historic District, Rosendale, New York
26. Copley Cement Company Kilns, Copley, Pennsylvania
27. Huron Portland Cement Company Plant, Alpena, Michigan
28. Crane Museum (Old Stone Mill Rag Room), Dalton, Massachusetts
29. Driscoll-Weyerhaeuser House, St. Paul, Minnesota
30. Holyoke Historic Industrial District, Holyoke, Massachusetts
31. Slatersville Historic District, Slatersville, Rhode Island
32. Old Stone Gate of Chicago Union Stockyards, Chicago, Illinois
33. Gustavus F. Swift House, Chicago, Illinois
34. National Biscuit Company Bakery, Chicago, Illinois
35. Post Barn and Administration Building, Battle Creek, Michigan
36. American Sugar Refining Company's Brooklyn refinery, Brooklyn, New York
37. Milton S. Hershey Mansion, Hershey, Pennsylvania
38. Richardson and Robbins Cannery, Dover, Delaware
39. California Packing Corporation Buildings, San Francisco, California
40. H. J. Heinz Company Buildings, Pittsburgh, Pennsylvania
41. Washburn A Mill Complex, Minneapolis, Minnesota
42. William Underwood Company Headquarters and Cannery, Watertown, Massachusetts
43. Proctor & Gamble Ivorydale Manufacturing Plant, St. Bernard, Ohio
44. Dixie Coca-Cola Bottling Company Plant, Atlanta, Georgia
45. Pabst Brewing Company Complex, Milwaukee, Wisconsin
46. Bomberger's Distillery, Newmanstown, Pennsylvania
47. Burks' Distillery (Maker's Mark Distillery), Loretto, Kentucky
48. Eckley Historic District, Eckley, Pennsylvania
49. Pocahontas Historic District, Pocahontas, Virginia
50. New Jersey Zinc Company Office, Austintown, Virginia

51. Elkins Coal and Coke Company Historic District, Bretz, West Virginia
52. Cameron Colliery Historic District, Shamokin, Pennsylvania
53. Calumet and Hecla Industrial District, Calumet, Michigan
54. Phelps Dodge General Office Building, Bisbee, Arizona
55. Old Waterworks, Bethlehem, Pennsylvania
56. Folsom Powerhouse, Folsom, California
57. Adams Power Plant Transformer House, Niagara Falls, New York
58. Firestone Tire and Rubber Plant No. 1, Akron, Ohio
59. Goodyear Tire and Rubber Plant No. 2 Complex, Akron, Ohio
60. Sloss Blast Furnace, Birmingham, Alabama
61. Frick Building, Pittsburgh, Pennsylvania
62. Cowles Electric Smelting and Aluminum Works, Lockport, New York

SPECIAL STUDIES

63. Ryman Auditorium, Nashville, Tennessee
64. Louisiana State Bank Building, New Orleans, Louisiana
65. Merieult House (Historic New Orleans Collection), New Orleans, Louisiana
66. Saenger Theater, New Orleans, Louisiana
67. Madewood, Napoleonville, Louisiana
68. Boley Building, Kansas City, Missouri
69. Union Station, Kansas City, Missouri
70. Mickve Israel Synagogue, Savannah, Georgia
71. Natchitoches Historic District, Natchitoches, Louisiana
72. Beth Elohim Synagogue, Charleston, South Carolina
73. First Scots Presbyterian Church, Charleston, South Carolina
74. St. Peter's Church, Albany, New York
75. Golden Lamb Inn, Lebanon, Ohio
76. Pearl S. Buck House, Dublin, Pennsylvania
77. Warm Springs Historic District, Warm Springs, Georgia
78. Liberty Hall, Crawfordville, Georgia
79. Metropolitan African Methodist Episcopal Church, Washington, D.C.
80. Soap Stone Ridge, Fulton County, Georgia
81. John Jay House, New York, New York
82. Bear Butte, Meade County, South Dakota

[FR Doc. 79-8323 Filed 3-19-79; 8:45 a.m.]

[4310-10-M]

Office of the Secretary

OUTER CONTINENTAL SHELF ADVISORY BOARD—POLICY COMMITTEE

Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92-643, 5 U.S.C. App. I and the Office of Management and Budget's Circular No. A-63, Revised.

The Policy Committee of the Outer Continental Shelf Advisory Board will meet during the period 9:00 a.m. to 4:30 p.m., April 17, 1979, and 9:30 a.m.

to 11:30 a.m., April 18, 1979, at The Plaza Hotel, 808 S. 20th at 8th Avenue, Birmingham, Alabama.

The meeting will cover the following principal subjects:

APRIL 17, 1979

(1) Status of OCS Lands Act Amendments of 1978:

- (a) 5-year OCS Leasing Program.
- (b) Preparation of Regulations.
- (c) OCS Participation Grants.
- (d) Fishermen's Contingency Fund.
- (e) Oil Spill Pollution Fund.
- (2) Reservoir Development.
- (3) Policies and Economics Utilized in Choosing Bidding Systems for Sales.
- (4) The Energy Outlook.

APRIL 18, 1979

- (1) Outcome of Sale No. 42 Court Suit.
- (2) Federal Reorganization.
- (3) Status of Expanded OCS Advisory Board.

The meeting is open to the public. Interested persons may make oral or written presentations to the Committee. Such requests should be made no later than April 2 to: Alan D. Powers, Office of OCS Program Coordination, Department of the Interior, Room 4126, Washington, D.C. 20240.

Requests to make oral statements should be accompanied by a summary of the statement to be made.

Minutes of the meeting will be available for public inspection and copying three weeks after the meeting at the Office of OCS Program Coordination, Room 4126, Department of the Interior, 18 and C Streets, NW., Washington, D.C.

ALAN D. POWERS,
Director, Office of
OCS Program Coordination.

MARCH 15, 1979.

[FR Doc. 79-8314 Filed 3-19-79; 8:45 am]

[8230-01-M]

INTERNATIONAL COMMUNICATION AGENCY

ANNUAL REVIEW OF ADVISORY COMMITTEES

Request for Public Recommendations and Comments

The International Communication Agency is currently conducting the Annual Comprehensive Review of the Federal Advisory Committees for which it has responsibility. The purpose of this review is to determine whether to continue, merge, terminate or revise the responsibilities of any of these advisory committees.

Currently USICA advisory committees are: The U.S. Advisory Commission on International Communication,

Cultural and Educational Affairs; The Advisory Committee on Music.

The agency seeks public participation in the annual review process and, in pursuit of this objective, is inviting comments and recommendations from all interested persons and groups regarding any of these advisory committees.

Comments should be submitted to USICA in writing no later than March 30, 1979, and should be addressed to Mr. James D. Isbister, Advisory Committee Management Officer, International Communication Agency, Associate Directorate for Management, Washington, D.C. 20547.

JAMES D. ISBISTER,
Associate Director for Management,
Advisory Committee
Management Officer.

[FR Doc. 79-8315 Filed 3-19-79; 8:45 am]

[4110-09-M]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 79-6]

GALLER DRUG CO.

Hearing

Notice is hereby given that on December 19, 1978, the Drug Enforcement Administration, Department of Justice, issued to Galler Drug Company, Chicago, Illinois, an Order to Show Cause as to why the Drug Enforcement Administration should not deny Respondent's application, submitted September 14, 1978, for registration under section 303 of the Controlled Substances Act (21 U.S.C. 823) to distribute controlled substances in Schedules II, III, IV and V.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m., on Tuesday, April 10, 1979, in Room 2568, 219 South Dearborn Street, Chicago, Illinois.

Dated: March 14, 1979.

PETER B. BENSINGER,
Administrator,
Drug Enforcement
Administration.

[FR Doc. 79-8303 Filed 3-19-79; 8:45 am]

[4110-09-M]

[Docket No. 79-5]

STEVEN G. SHELLABARGER, M.D.

Hearing

Notice is hereby given that on December 27, 1978, the Drug Enforcement Administration, Department of Justice, issued to Steven G. Shellabarger, M.D., Roadhouse, Illinois, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke Respondent's DEA registration AS7151208.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m., on Tuesday, April 17, 1979, in the Hearing Room, Room 1210, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C.

Dated: March 14, 1979.

PETER B. BENSINGER,
Administrator,
Drug Enforcement
Administration.

[FR Doc. 79-8302 Filed 3-19-79; 8:45 am]

[4510-30-M]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Administrator, Employment and Training Administration, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C., this 15th day of March 1979.

ERNEST G. GREEN,
Assistant Secretary for
Employment and Training.

APPLICATIONS RECEIVED DURING THE WEEK ENDING MARCH 14, 1979

Name of Applicant, location of enterprise, and principal product or activity

Hyannis Regency Trust, Hyannis, Massachusetts; Commercial/resort motel.
Pure 1 Inc., Lewiston, Maine; Processed poultry.
Falmouth-By-The-Sea, Falmouth, Maine; Nursing home care.

Compania Arroceria El Coqui, Arecibo, Puerto Rico; Rice plant.

International Wildlife Parks, Inc., Largo, Maryland; Wildlife park and amusement.

Primet, Inc., Ridgway, Pennsylvania; Iron powder plant.

Eastern Standard Coal Co., Inc., Summit Hills County, Pennsylvania; Deep mining operation.

Proform, Inc., Reidland, Kentucky; Manufacture of reinforced plastic barge and rail car covers and track collector pans.

Nantucket Industries, Inc., Cartersville, Georgia; Cut, make and sewing of ladies', children's and men's undergarments.

Tidwell Industries, Inc., Haleyville, Alabama; Manufactured housing.

Southern Can Company, Tallapoosa, Georgia; Manufacture of metal cans.

Process Computer Systems, Inc., Saline, Michigan; Manufacture of microcomputers.

American Door Company of Michigan, Inc., Walkerton, Indiana; Manufacture of wood flush doors.

Lundin Construction Company, Inc., Mankato, Minnesota; Construction contracts, limestone quarry sales and gravel crushing.

The Wayside Press, Inc., Mendota, Illinois; Publication printing.

NFD, Inc., Braham, Minnesota; Manufacture of potato machinery and related equipment.

Orange Village Nursing Home Associates, Trumbull County, Ohio; Nursing home facility.

Three S Enterprises, Inc., Slidell, Louisiana; New truck stop, restaurant, convenience store, and motel.

Rapides General Hospital, Alexandria, Louisiana; Provision of healthcare services.

Ozark Autumn Manor, Inc., Cassville, Missouri; Nursing home.

Mount Arbor Nurseries, Shenandoah, Iowa; Nursery.

Riverview Properties, Ltd., Yankton County, South Dakota; Motel-convention complex.

Midwest Processing Company, Velva, North Dakota; Sunflower processing plant.

Sea Catch Inc., Kenai, Alaska; Frozen salmon plant.

[FR Doc. 79-8305 Filed 3-19-79; 8:45 am]

[4510-30-M]

EXTENDED BENEFITS

Extended Benefit Period in the State of Rhode Island

This notice announces the beginning of a new Extended Benefit Period in the State of Rhode Island effective on March 18, 1979.

BACKGROUND

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of the Employment Security Amendments of 1970; Pub. L. 91-373; 26 U.S.C. 3304 note), established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. The Ex-

tended Benefit Program takes effect during periods of high unemployment in a State or the nation, to furnish up to 13 weeks of additional benefits to eligible individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. Part 615 of Chapter V, Title 20, Code of Federal Regulations, implements the statute.

In accordance with section 203(e) of the Act, the Rhode Island unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines, in accordance with 20 CFR 615.12(e), that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment under the State unemployment compensation law equalled or exceeded 5.0 percent. 20 CFR 615.12(c)(2)(i). The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period will be in effect for a minimum of 13 consecutive weeks, and will end the third week after there is an "off" indicator.

DETERMINATION OF "ON" INDICATOR

The head of the employment security agency of the State of Rhode Island has determined that, for the period consisting of the week ending on March 3, 1979, and the immediately preceding 12 weeks, the rate of insured unemployment in the State equalled or exceeded 5.0 percent.

Therefore, an Extended Benefit Period commenced in that State with the week beginning on March 18, 1979.

INFORMATION FOR CLAIMANTS

The duration of Extended Benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the new Extended Benefit Period. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law during the Extended Benefit period, including exhaustion by reason of the expiration of the individual's benefit year. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to Extended Benefits in the State of Rhode Island, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State Employment Office of the Rhode Island Department of Employment Security in their locality.

Signed at Washington, D.C., on March 15, 1979.

ERNEST G. GREEN,
Assistant Secretary for
Employment and Training.

[FR Doc. 79-8355 Filed 3-19-79; 8:45 am]

[4510-43-M]

Mine Safety and Health Administration

[Docket No. M-79-22-C]

BROWNIES CREEK COLLIERIES, INC.

Petition for Modification of Application of Mandatory Safety Standard

Brownies Creek Collieries, Inc., Route 6, Box 46, Pineville, Kentucky 40977, has filed a petition to modify the application of 30 CFR 77.1605(k) (berms) to its Hance Surface Mine in Bell County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. The petitioner requests relief from the installation of berms on 5.14 miles of its elevated roadway.

2. The bench on which the road is located is between 50 and 60 feet in width. The travel path is about 25 feet wide, the remainder of the bench being shoulder. The roadway is located next to the highwall and the shoulder is on the outside of the bench.

3. Signs warning drivers of curves have been placed on the roadway and additional traffic control signs warning of steep grades and other hazards will be similarly placed.

4. All loaded vehicles are on the inside of the roadway during the entire length of their haul.

5. Only experienced and competent drivers are permitted on the haul.

6. All vehicles used in the hauling operation are well maintained and equipped with regular brakes, engine brakes and emergency brakes.

7. The petitioner states that the construction of berms along the outer banks of the roadway would result in a diminution of safety for the following reasons:

a. During a heavy rainfall, water would be retained on the roadway, creating a potential traction and hydroplaning hazard for vehicles.

b. Water flowing next to the berm has the potential of causing ruts in the roadway, adding additional maintenance problems and creating a hazard for vehicle drivers.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before April 19, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: March 12, 1979.

ECKEHARD MUESSIG,
Acting Assistant Secretary
for Mine Safety and Health.

[FR Doc. 79-8217 Filed 3-19-79; 8:45 am]

[4510-43-M]

[Docket No. M-78-82-C]

SEWELL COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Sewell Coal Company, Nettie, West Virginia, has filed a petition to modify the application of 30 CFR 75.1710 (canopies) to its No. 4 Mine, located in Nicholas County, West Virginia, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. The petitioner is operating in coal seam heights of 19 to 44 inches. The petition concerns the use of canopies on the following electric face equipment in seam heights of 60 inches or less: miners, shuttle cars, scoops, torque cars, and roof bolters.

2. The petitioner constantly encounters rolls, dips and other seam variations while mining.

3. Attempts by the petitioner to install canopies on its electric face equipment used in low seam heights have resulted in the following reductions in safety to its miners:

a. Cramped and awkward positions have led operators to leave their cabs frequently, at times in situations exposing them to hazards of other mining equipment;

b. Limited visibility has caused operators to put their heads outside the equipment to see, exposing them to hazards of moving equipment;

c. Changes in height and undulations in the coal seam after the installation of a canopy make equipment clearance inadequate, leading to collisions with the top, shearing of roof bolts, damaging of cross beams, and

the destruction of equipment and roof support; and

d. Presently available cab equipment known to the petitioner limits an operator's path of escape in the event of a roof or rib fall.

4. For these reasons, the petitioner requests relief from the application of the standard to its electric face equipment operating in seam heights of 60 inches or less.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before April 19, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: March 12, 1979.

ECKEHARD MUESSIG,
Acting Assistant Secretary
for Mine Safety and Health.

[FR Doc. 79-8218 Filed 3-19-79; 8:45 am]

[4510-43-M]

[Docket No. M-78-91-C]

SEWELL COAL CO.

Petition for Modification of Application of Mandatory Safety Co.

Sewell Coal Company, Nettie, West Virginia, has filed a petition to modify the application of 30 CFR 75.1710 (canopies) to its No. 1-A Mine, located in Nicholas County, West Virginia in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. The petitioner is operating in coal seam heights of 19 to 44 inches. The petition concerns the use of canopies on the following electric face equipment in seam heights of 60 inches or less: miners, shuttle cars, scoops, torque cars, and roof bolters.

2. The petitioner constantly encounters rolls, dips and other seam variations while mining.

3. Attempts by the petitioner to install canopies on its electric face equipment used in low seam heights have resulted in the following reductions in safety to its miners:

a. Cramped and awkward positions have led operators to leave their cabs frequently, at times in situations exposing them to hazards of other mining equipment;

b. Limited visibility has caused operators to put their heads outside the equipment to see, exposing them to hazards of moving equipment;

c. Changes in height and undulations in the coal seam after the installation of a canopy make equipment clearance inadequate, leading to collisions with the top, shearing of roof bolts, damaging of cross beams, and the destruction of equipment and roof support; and

d. Presently available cab equipment known to the petitioner limits an operator's path of escape in the event of a roof or rib fall.

4. For these reasons, the petitioner requests relief from the application of the standard to its electric face equipment operating in seam heights of 60 inches or less.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before April 19, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: March 12, 1979.

ECKEHARD MUESSIG,
Acting Assistant Secretary for
Mine Safety and Health.

[FR Doc. 79-8219 Filed 3-19-79; 8:45 am]

[4510-43-M]

[Docket No. M-79-23-C]

WELDEN MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Welden Mining Company, Route #4, LaFollette, Tennessee 37766, has filed a petition to modify the application of 30 CFR 75.1719 (illumination), to its No. 1 Mine, located in Campbell County, Tennessee, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164.

The substance of the petition follows:

1. The petition concerns the installation of lighting on the petitioner's mining machines.

2. The petitioner is mining coal seams 17 to 30 inches in height and sometimes smaller.

3. The petitioner's 35L Jeffrey Coal Cutting Machine is 18 inches in height.

4. Due to the low ceiling, it is neither feasible nor practical to install lights on the petitioner's mining machines or on stationery fixtures.

5. The petitioner states that the installation of such lights would result in a diminution of safety because the lights would be blinding to miners and

would create additional heat in the close areas in which the miners work.

6. For these reasons, the petitioner request relief from the application of the standard.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before April 19, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: March 12, 1979.

ECKEHARD MUESSIG,

*Acting Assistant Secretary for
Mine Safety and Health.*

[FR Doc. 79-8220 Filed 3-19-79; 8:45 am]

[4510-29-M]

Office of Pension and Welfare Benefit
Programs

EMPLOYEE BENEFIT PLANS

Notice to the Public Pursuant to Section 106 of the President's Reorganization Plan No. 4 of 1978

Pursuant to Section 106 of the President's Reorganization Plan No. 4 of 1978, the Department of the Treasury is required to notify the Department of Labor of certain actions which it proposes to take under certain provisions of the Employee Retirement Income Security Act of 1974 (the Act).

On March 9, 1979, the Department of Treasury notified the Department of Labor that it intends to publish a revenue ruling applying to collectively bargained plans a Revenue Procedure to be issued in the near future which will initially govern the process for obtaining rulings and determination letters under Section 412(c)(8) of the Code and Section 302(c)(8) of the Act.

IAN D. LANOFF,
*Administrator, Pension and
Welfare Benefit Programs.*

[FR Doc. 79-8271 Filed 3-19-79; 8:45 am]

[4510-23-M]

DEPARTMENT OF LABOR

Office of the Secretary

APPLICATION FOR WORKER ADJUSTMENT ASSISTANCE

Investigations Regarding Certification of
Eligibility

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly

to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 30, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 30, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of March 1979.

HAROLD A. BRATT,
*Acting Director, Office of
Trade Adjustment Assistance.*

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
The Arrow Company, Div. of Cluett Peabody & Co., Inc. (ACTWU).	Virginia, Minn.	3/5/79	2/17/79	TA-W-4,903	Cutting, stitching and packaging of men's dress shirts.
The Arrow Company, Div. of Cluett Peabody & Co., Inc. (ACTWU).	Eveleth, Minn.	3/5/79	2/17/79	TA-W-4,904	Cutting, stitching and packaging of men's dress shirts.
Daisy's Originals, Inc. (workers)	Miami, Fla.	3/5/79	2/27/79	TA-W-4,905	Women's pant suits, dresses, blouses and slacks.
Genesco, Inc., Carmi Ainsbrooks Plant (workers).	Carmi, Ill.	3/1/79	2/20/79	TA-W-4,906	Men's screen print "T" shirts, thermal underwear and men's boxer shorts.
International Platex, Inc. (workers)	Lafayette, Ala.	3/5/79	2/28/79	TA-W-4,907	Ladies' foundations garments.
Miley Miss, Inc. (ILGWU)	New York, N.Y.	2/27/79	2/22/79	TA-W-4,908	Show room plus sample making of children's clothes (skirts, slacks, shorts, blouses, vests and jumpers).
Skland Textile Company (workers)	Morganton, N.C.	3/5/79	2/28/79	TA-W-4,909	Buster Brown Children's clothes.
Slayton Manufacturing (workers)	Slayton, Minn.	3/2/79	2/26/79	TA-W-4,910	Sewing of sleepwear for girls.
Worcester Knitting Company (workers).	Worcester, Mass.	3/5/79	2/22/79	TA-W-4,911	Children's polo shirts also for boy's.

[FR Doc. 79-8078 Filed 3-19-79; 8:45 am]

[4510-23-M]**APPLICATION FOR WORKER ADJUSTMENT ASSISTANCE****Investigations Regarding Certifications of Eligibility**

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12. The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or di-

rectly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 30, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 7th day of March 1979.

HAROLD A. BRATT,
Acting Director, Office of
Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Latex Corp. (USWA).....	Sullivan, Ind.....	3/2/79	2/15/79	TA-W-4,894	Latex rubber, pharmaceutical products, medical aids used for kidney functions and blood pressure equipment.
Boot-Ster Manufacturing Co., Inc. (workers).....	Clarksville, Tenn.....	3/1/79	2/20/79	TA-W-4,895	Ladies' casual shoes.
Jo Ann Coal Co., Inc. #2 Mine (U.M.W.A.).....	Raleigh County, W. Va.....	2/23/79	2/16/79	TA-W-4,896	Mining of coal.
Jo-Gal Shoe (company).....	Lawrence, Mass.....	3/1/79	2/26/79	TA-W-4,897	Infants, childrens and misses novelty shoes.
Majestic Silver Company (company).....	New Haven, Conn.....	3/1/79	2/23/79	TA-W-4,898	Importation of flatware.
Melitta, Inc. (Amalgamated Food Processors).....	Cherry Hill N.J.....	2/28/79	2/20/79	TA-W-4,899	Coffee makers, coffee filters and ground roast coffee.
Opelika Manufacturing Corp. (workers).....	Opelika, Ala.....	2/26/79	2/22/79	TA-W-4,900	Weave raw cotton into material that is later used for cotton towels.
S & S Garments (workers).....	Brooklyn, N.Y.....	2/27/79	2/21/79	TA-W-4,901	Leather and suede coats for ladies.
Wear Rough Manufacturing Corporation (company).....	Bloomington, N.J.....	3/2/79	2/26/79	TA-W-4,902	Children's play clothes and workers clothing (painters, machinists, plumbers).

[FR Doc. 79-8079 Filed 3-19-79; 8:45 am]

[4510-28-M]**Office of the Secretary**

[TA-W-4566]

COOPER-WISS, INC., OFFICE, ADMINISTRATIVE WORKERS**Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-4566: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 2, 1979 in response to a worker petition received on December 27, 1978 which was filed on behalf of workers and former workers providing office/administrative services at the Newark, New Jersey plant of Cooper-Wiss, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on January 9, 1979 (44 FR 2033). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Cooper-Wiss, Incorporated and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

Office, administrative workers at the Newark plant perform services necessary to support the production of pocket knives at the Maplewood, New Jersey plant of Cooper-Wiss, Incorporated. Production employees at the Maplewood, New Jersey plant were certified eligible to apply for adjustment assistance on October 20, 1978 with an impact date set on December

10, 1977. See Department Notice of Determination for TA-W-3294.

Office, administrative workers at the Newark plant have suffered employment declines during 1978 compared to 1977 due to curtailment of pocket knives production at the Maplewood, New Jersey plant of Cooper-Wiss.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with pocket knives produced at the Maplewood, New Jersey plant of Cooper-Wiss, Incorporated contributed importantly to the total or partial separation of office, administrative workers at the Newark, New Jersey plant of Cooper-Wiss, Incorporated. In accordance with the provisions of the Act, I make the following certification:

"All office, administrative workers at the Newark, New Jersey plant of Cooper-Wiss, Incorporated engaged in employment related to the production of pocket knives at the Maplewood, New Jersey facility who became totally or partially separated from employment on or after December 22, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 12th day of March 1979.

JAMES F. TAYLOR,
Director, Office of Management
Administration and Planning.

(FR Doc 79-8224 Filed 3-19-79; 8:45 am)

[4510-28-M]

(TA-W-4058, 4059)

DAY'S INC.

Affirmative Determination Regarding Application for Reconsideration

On January 22, 1979, the United Garment Workers of America, AFL-CIO requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers of Day's, Inc., Bremerton, and Tacoma, Washington. This determination was published in the FEDERAL REGISTER on January 12, 1979, (44 FR 2729).

The petitioning union raises one basic issue in the application; namely, that the Department of Labor should have conducted a more comprehensive survey of Day's customers. The union alleges that had this been done workers at Day's, Inc., Tacoma and Bremerton, Washington, would have met the test that increased imports contributed importantly to worker separations and sales or production declines.

CONCLUSION

After review of the application, I conclude that this claim of the petitioning union is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore granted.

Signed at Washington, D.C., this 12th day of March 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

(FR Doc. 79-8225 Filed 3-19-79; 8:45 am)

[4510-28-M]

(TA-W-4467)

DENLEY KNITTING MILLS

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4467: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 6, 1978 in response to a worker petition received on December 1, 1978 which was filed on behalf of workers and former workers producing polyester knit fabrics and ladies' suits at Denley Knitting Mills, Brooklyn, New York. The investigation revealed that the plant primarily produced ladies' suits.

The Notice of Investigation was published in the FEDERAL REGISTER on December 19, 1978 (43 FR 59165). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Denley Knitting Mills, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed in the course of the investigation indicated that imports of articles like or directly com-

petitive with ladies' suits produced at Denley Knitting Mills did not increase from 1976 to 1977. Denley Knitting Mills began closing out its operations in the fourth quarter of 1977 and discontinued all production and sales by March 1978. The company shut down in May 1978.

Imports of women's, misses' and children's suits decreased from 408,000 dozen in 1976 to 384,000 dozen in 1977. The ratio of imports of domestic production of women's, misses' and children's suits decreased from 11.4% in 1976 to 10.5% in 1977.

CONCLUSION

After careful review, I determine that all workers of Denley Knitting Mills, Brooklyn, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 12th day of March 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

(FR Doc. 79-8226 Filed 3-19-79; 8:45 am)

[4510-28-M]

(TA-W-4501)

DOLAN STEEL CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4501: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 12, 1978 in response to a worker petition received on December 7, 1978 which was filed on behalf of workers and former workers producing cold rolled and galvanized steel at the Dolan Steel Company, Incorporated, Bridgeport, Connecticut.

The Notice of Investigation was published in the FEDERAL REGISTER on December 19, 1978 (43 FR 59180-81). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Dolan Steel Company, Incorporated, its customers, the American Iron and Steel Institute, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility

requirements of Section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

U.S. imports of galvanized sheet steel, which includes hot dip galvanized sheet and strip steel, increased both absolutely and relative to domestic production in 1977 compared to 1976 and in 1978 compared to 1977.

The Department conducted a survey of major customers who purchased hot dip galvanized sheet and strip steel produced by the Dolan Steel Company, Incorporated. The survey revealed that customers representing a significant portion of sales decreased purchases from the subject firm while increasing imports in the last quarter of 1978 compared to the same period in 1977. The Dolan Steel Company, Incorporated shut down in December, 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the cold rolled and galvanized steel produced at the Dolan Steel Company, Incorporated, Bridgeport, Connecticut contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of the Dolan Steel Company, Incorporated, Bridgeport, Connecticut, engaged in employment related to the production of hot-dipped galvanized steel who became totally or partially separated from employment on or after November 15, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C., this 12th day of March 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-8227 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4710]

G.A.F. CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4710: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 16, 1979, in response to a

worker petition received on January 11, 1979, which was filed on behalf of workers and former workers producing asbestos siding shingles at the South Bound Brook, New Jersey plant of G.A.F. Corporation. The investigation revealed that the plant also produces asphalt roofing.

The Notice of Investigation was published in the FEDERAL REGISTER on January 26, 1979 (44 FR 5534). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of G.A.F. Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. With respect to workers producing asbestos siding without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Industry sources indicated that there have been no imports of asbestos siding during the past five years. Industry sources also indicate that imports of vinyl and aluminum sidings, which are competitive with asbestos siding, have been negligible.

Results of a Department of Labor survey confirmed industry findings on imports. Customers accounting for a significant proportion of 1977 sales by the South Bound Brook plant indicated no purchases of imported asbestos, aluminum or vinyl siding in the 1976-1978 period.

Petitioners allege that the production machinery from the South Bound Brook plant was shipped to Germany. However, the investigation revealed that the German company to which the machinery was sold will produce for the German market and will not export to the U.S.

With respect to workers producing asphalt roofing, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales and production of asphalt roofing at the South Bound Brook, New Jersey plant increased in both quantity and value in 1978 compared with 1977.

CONCLUSION

After careful review, I determine that all workers of the South Bound Brook, New Jersey plant of G.A.F. Corporation are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 12th day of March 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.
[FR Doc. 79-8228 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4847]

G.C. FASHIONS

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 26, 1979 response to a worker petition received on February 16, 1979 which was filed on behalf of workers and former workers producing ladies' coats at G.C. Fashions, Glen Cove, New York.

The Notice of Investigation was published in the FEDERAL REGISTER on March 9, 1979 (44 FR 13093). No public hearing was requested and none was held.

On January 9, 1979, a petition was filed on behalf of the same group of workers (TA-W-4736).

Notice of Investigation was published in the FEDERAL REGISTER on January 30, 1979 (44 FR 5952). No public hearing was requested and none was held.

Since the identical group of workers is the subject of the ongoing investigation TA-W-4736, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 13th day of March 1979.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.
[FR Doc. 79-8229 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4847]

MERCER DRESS

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4847: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 10, 1979 in response to a worker petition received on January 3, 1979 which was filed on behalf of workers and former workers producing ladies' sportswear, suits and dresses at Mercer Dress, Burgin, Kentucky, a plant of the Butte Knitting Mills Division of Jonathan Logan, Incorporated. The investigation revealed that Mercer Dress produces ladies' dresses and ladies' suits, which consist of a jacket and skirt and may include pants, a blouse and a vest.

The Notice of Investigation was published in the *FEDERAL REGISTER* on January 19, 1979 (44 FR 4039-4040). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Butte Knitting Mills, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses' and children's suits (including pant suits and jumpsuits) increased absolutely in the first three quarters of 1978 compared to the same period of 1977.

U.S. imports of women's, misses' and children's dresses increased absolutely and relative to domestic production from 1975 to 1976. Imports decreased absolutely and relative to domestic production from 1976 to 1977 and then increased absolutely in 1978.

U.S. imports of women's, misses' and children's blouses and shirts increased absolutely in each year from 1975 through 1978.

A departmental survey of customers of Butte Knitting Mills revealed that several customers increased their purchases of imported ladies' suits and dresses and decreased purchases from Butte Knitting Mills in 1977 as compared to 1976 and in 1978 as compared to 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' suits and dresses produced at the Mercer Dress, Burgin, Kentucky plant of Butte Knitting Mills contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Mercer Dress, Burgin, Kentucky plant of the Butte Knitting Mills

Division of Jonathan Logan, Incorporated who became totally or partially separated from employment on or after December 29, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of March 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.

[FR Doc. 79-8230 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4615]

MILL COAL CO., INC.

Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4615: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 8, 1979 in response to a worker petition received on January 2, 1979 which was filed by the United Mine Workers of America, in part on behalf of workers and former workers mining metallurgical coal at the Mill Coal Company, Incorporated, Leivasy, West Virginia.

The Notice of Investigation was published in the *FEDERAL REGISTER* on January 19, 1979 (44 FR 4029-30). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Mill Coal Company, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of metallurgical coal are negligible. However, in accordance with Section 222 of the Trade Act of 1974 and 29 CFR 90.2, a domestic article may be "directly competitive" with an imported article at a later stage of processing. Coke is metallurgical coal at a later stage of processing. Therefore, imports of coke as well as imports of metallurgical coal should be considered in determining import injury to workers producing metallurgical coal.

U.S. imports of coke increased from 1,311 thousands of tons in 1976 to 1,829 thousands of tons in 1977 and increased from 1,057 thousands of tons

in the first nine months of 1977 to 4,123 thousands of tons in the first nine months of 1978.

The ratio of imports to domestic production for coke increased from 2.2 percent in 1976 to 3.4 percent in 1977 and increased from 2.6 percent in the first nine months of 1977 to 11.5 percent for the first nine months of 1978.

Mill Coal Company, Incorporated mines coal on a contractual basis and sells the coal to a single firm. The Department of Labor conducted a survey of the major customers purchasing metallurgical coal from that firm. Several of these customers reduced purchases from that firm and increased imports of metallurgical coal and/or coke from 1977 to 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal produced at the Mill Coal Company, Incorporated, Leivasy, West Virginia contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Mill Coal Company, Incorporated, Leivasy, West Virginia who became totally or partially separated from employment on or after November 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of March 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.

[FR Doc. 79-8231 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4241]

NIFTY CREATIONS, INC.

Negative Determination Regarding Application for Reconsideration

On February 15, 1979, one of the petitioners requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for worker adjustment assistance in the case of former workers of Nifty Creations, Inc., Lindenhurst, New York. The determination was published in the *FEDERAL REGISTER* on January 26, 1979, (44 FR 5537).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears, on the basis of facts not previously considered, that the de-

termination complained of was erroneous.

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

In her letter, the petitioner claimed that job loss at Nifty Creations, Inc., was not due to the loss of company management but rather due to import competition. The petitioner claimed that many of the employer's suppliers went out of business because of foreign imports. The petitioner also maintained that some of the workers were able to obtain adjustment assistance (presumably through an association with some other firm) and that all workers should have been treated equally.

A review of the case file indicates that the principal reason for the Department's negative determination was that the owner's illness was the dominant cause of the plant shutdown. The owner and manager of Nifty fell ill in the fall of 1977 and closed his plant in October. He died in January, 1978. The firm was sold in January, 1978, to another apparel manufacturer with most of the former workers being reemployed by the new owner.

A review of employment records for Nifty indicates that in each of the first three quarters of 1977 employment exceeded levels for the same quarter in 1976. Indeed, employment did not decline at Nifty until the last quarter of 1977, the period when the problem of the owner's illness occurred. The legislative history of the Trade Act of 1974 specifies that in cases where a cause so dominant that separations and declines in sales or production would have been essentially the same, irrespective of the influence of increased imports that the Secretary could properly find that imports had not "contributed importantly" to worker separations within the meaning of the Act. According to the legislative history, denial would be appropriate even in cases where imports were at such a level where under ordinary circumstances they would have been an important factor in causing total or partial worker separations (Report of the Committee on Finance of the United States Senate, 93rd Congress, 2nd Session, Report 93-1298, November 26, 1974, p. 133). It is the Department's position that the owner's illness and death was a dominant cause in the separation of workers from employment at Nifty Creations.

CONCLUSION

After review of the application and the investigative file, I conclude that

there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 12th day of March 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-8232 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4625, 4626, 4628, 4630, 4631, 4632]

ROYAL COAL CO.

Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4625-26, 4628, 4630-32: investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigations were initiated on January 8, 1979 in response to a worker petition received on December 18, 1978 which was filed by the United Mine Workers of America, in part on behalf of workers and former workers mining metallurgical coal at the #5 Mine, Fayette Station, West Virginia (TA-W-4625), the #8 Mine, Prince, West Virginia (TA-W-4626), and the #7 Mine, Prince, West Virginia (TA-W-4628), the #10 Mine, Layland, West Virginia (TA-W-4630), the #3 Mine, Layland, West Virginia (TA-W-4631), and the #6 Mine, Layland, West Virginia, (TA-W-4632), of Royal Coal Company, Beckley, West Virginia.

The Notice of Investigation was published in the FEDERAL REGISTER on January 19, 1979 (44 FR 4029-30). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Royal Coal Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of metallurgical coals are negligible. However, in accordance with Section 222 of the Trade Act of 1974 and 29 CFR 90.2, a domestic article may be "directly competitive" with an imported article at a later stage of

processing. Coke is metallurgical coal at a later stage of processing. Therefore, imports of coke as well as imports of metallurgical coal should be considered in determining import injury to workers producing metallurgical coal.

U.S. imports of coke increased from 1,311 thousand tons in 1976 to 1,839 thousand tons in 1977. U.S. imports increased to 4,123 thousand tons in the first three quarters of 1978 compared to 1,057 thousand tons in the same period of 1977.

Relative to domestic production, imports of coke increased from 2.2 percent in 1976 to 3.4 percent in 1977, and increased to 11.5 percent in the first three quarters of 1978 compared to 2.6 percent in the same period of 1977.

A department survey established that one major customer had sharply reduced its purchases from Royal Coal Company in 1978 as a result of a decline in its own sales of metallurgical coal to two large U.S. steel producers. This customer accounted for the preponderance of the decline in Royal Coal Company's sales from 1977 to 1978. Further investigation revealed that these steel producers had increased imports of coke in 1978 compared to 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal produced at the #5 Mine, the #8 Mine, the #7 Mine, the #10 Mine, the #3 Mine, and the #6 Mine of the Royal Coal Company contributed importantly to the decline in sales or production and to the total or partial separation of workers of those facilities. In accordance with the provisions of the Act, I make the following certifications:

All workers at the #5 Mine of Royal Coal Company, Fayette Station, West Virginia (TA-W-4625) who became totally or partially separated from employment on or after October 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974; and

All workers at the #8 Mine, Prince, West Virginia (TA-W-4626), the #7 Mine, Prince, West Virginia (TA-W-4628), the #10 Mine, Layland, West Virginia (TA-W-4630), the #3 Mine, Layland, West Virginia (TA-W-4631), and the #6 Mine, Layland, West Virginia (TA-W-4632) of Royal Coal Company who became totally or partially separated from employment on or after March 27, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of March 1979.

JAMES F. TAYLOR,
Director, Office of Management
Administration, and Planning.
[FR Doc. 79-8233 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4650, 4651, 4652, 4653, 4654]

SLAB FORK COAL CO.

Negative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4650, 4651, 4652, 4653, 4654: investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 10, 1979 in response to a worker petition received on December 18, 1978 which was filed by the United Mine Workers of America, District 29, on behalf of workers and former workers producing metallurgical coal at the Slab Fork mine #8 (TA-W-4651), Mine #10 (TA-W-4650), Preparation Plant #1 (TA-W-4652), Preparation Plant #2 (TA-W-4653), all of Raleigh County, West Virginia, and the Gaston Mine (TA-W-4654) of Wyoming County, West Virginia, all facilities of Slab Fork Coal Company, Slab Fork, West Virginia. The investigation revealed that a sixth facility existed at the Gaston mine site. That facility is called Preparation Plant #3.

The Notice of Investigation was published in the FEDERAL REGISTER on January 19, 1979 (44 FR 4039-40). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Slab Fork Coal Company, its customers, the U.S. Department of Commerce, the U.S. Department of the Interior, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The major customer which decreased purchases of metallurgical

coal from Slab Fork Coal Company in 1978 did not purchase any imported coal or coke. All other major customers increased purchases of metallurgical coal from Slab Fork Coal Company in 1978.

Sales and production of metallurgical coal at Slab Fork Coal Company increased in both quantity and value during the strike-free period, April to November, 1978, compared with the same period of 1977.

CONCLUSION

After careful review, I determine that all workers of Slab Fork Coal Company, Raleigh and Wyoming Counties, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of March 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.
[FR Doc. 79-8234 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4634]

UNITED POCAHONTAS COAL CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4634: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 8, 1979 in response to a worker petition received on December 18, 1978 which was filed by the United Mine Workers of America, in part on behalf of workers and former workers cleaning metallurgical coal at the Algoma Preparation Plant of United Pocahontas Coal Company, Algoma, West Virginia.

The Notice of Investigation was published in the FEDERAL REGISTER on January 19, 1979 (44 FR 4029-30). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of United Pocahontas Coal Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have

been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

Average employment of production workers at the Algoma Preparation Plant increased from 1976 to 1977. Workers at the mine were on strike between December 6, 1977 and March 27, 1978. Employment increased in the April-November period of 1978 compared to the same period of 1977. Average weekly hours worked per employee did not decrease significantly during this period. There is no immediate threat of separation of workers at this plant.

CONCLUSION

After careful review, I determine that all workers of the Algoma Preparation Plant of United Pocahontas Coal Company, Algoma, West Virginia, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of March 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration, and Planning.
[FR Doc. 79-8235 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4633, 4635, 4638]

UNITED POCAHONTAS COAL CO.

Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4633, 4635, and 4638: investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigations were initiated on January 8, 1979 in response to a worker petition received on December 18, 1978 which was filed by the United Mine Workers of America, in part on behalf of workers and former workers at the #14 Mine, Algoma, West Virginia (TA-W-4633), the #6A Mine, Crumpler, West Virginia (TA-W-4635), and the #19 Mine, Crumpler, West Virginia (TA-W-4638), of United Pocahontas Coal Company.

The Notice of Investigation was published in the FEDERAL REGISTER on January 19, 1979 (44 FR 4029-30). No public hearing was requested and none was held.

The determination was based upon information obtained principally from

officials of United Pocahontas Coal Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of metallurgical coal are negligible. However, in accordance with Section 222 of the Trade Act of 1974 and 29 CFR 90.2, a domestic article may be "directly competitive" with an imported article at a later stage of processing. Coke is metallurgical coal at a later stage of processing. Therefore, imports of coke as well as imports of metallurgical coal should be considered in determining import injury to workers producing metallurgical coal.

U.S. imports of coke increased from 1,311 thousand tons in 1976 to 1,829 thousand tons in 1977. U.S. imports increased to 4,123 thousand tons in the first three quarters of 1978 compared to 1,057 thousand tons in the same period of 1977.

Relative to domestic production, imports of coke increased from 2.2 percent in 1976 to 3.4 percent in 1977, and increased to 11.5 percent in the first three quarters of 1978 compared to 2.6 percent in the same period of 1977.

A Department survey established that one major customer had sharply reduced its purchases from United Pocahontas Coal Company in 1978 as a result of a decline in its own sales of metallurgical coal to two large U.S. steel producers.

This customer accounted for the preponderance of the decline in the United Pocahontas Coal Company's sales from 1977 to 1978. Further investigation revealed that these steel producers had increased imports of coke in 1978 compared to 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal produced at the #14 Mine, the #6A Mine, and the #19 Mine of United Pocahontas Coal Company contributed importantly to the decline in sales or production and to the total or partial separation of workers at those facilities. In accordance with the provisions of the Act, I make the following certifications:

All workers at the #14 Mine of United Pocahontas Coal Company, Algoma, West Virginia (TA-W-4633), who became totally or partially separated from employment on or after November 1, 1978 are eligible to apply

for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974; and

All workers at the #6A Mine of United Pocahontas Coal Company, Crumpler, West Virginia (TA-W-4635), who became totally or partially separated from employment on or after October 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974; and

All workers at the #19 Mine of United Pocahontas Coal Company, Crumpler, West Virginia (TA-W-4638), who became totally or partially separated from employment on or after September 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of March 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration, and Planning.

(FR Doc. 79-8236 Filed 3-19-79; 8:45 am)

[4510-28-M]

(TA-W-4269)

BUNKER HILL CO. ELECTROLYTIC ZINC PLANT, KELLOGG, IDAHO

Negative Determination Regarding Application for Reconsideration

By letter of January 24, 1979, one of the petitioners requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers of The Bunker Hill Company's Electrolytic Zinc plant at Kellogg, Idaho. The determination was published in the FEDERAL REGISTER on January 12, 1979, (44 FR 2728).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

- (1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;
- (2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or
- (3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioner claims that employment at the Kellogg, Idaho, plant has not reached its pre-strike levels in 1977 and that this is sufficient to meet the statutory employment test as stated in Section 222 of the Trade Act of 1974 which is the basis for the denial of the workers' petition for trade adjustment assistance. The petitioner further claims that since workers at Bunker Hills' Pan American Mine, TA-W-3485, and Pend Oreille Mine, TA-W-

3271, who supplied zinc concentrate for the Kellogg, Idaho, plant were certified eligible to apply for trade adjustment assistance then workers at the Kellogg, Idaho, plant should also be certified.

The Department does not consider the petitioner's claims as relevant in rebutting the basis for the Department's denial. The Kellogg, Idaho, plant was shut down because of a strike from May 6, 1977, to September 19, 1977. The earliest possible impact date is September 11, 1977, more than one week before the end of the strike. Since the plant reopened after the strike, average production employment has increased in each quarter compared to the previous quarter and no production employees have been laid off since the plant reopened after the strike. Average salaried employment has remained the same or increased in each quarter for the past eight quarters. A high company official indicated that there was no shifting of production workers to salaried positions.

CONCLUSION

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied. Signed at Washington, D.C., this 13th day of March 1979.

C. MICHAEL AHO,
Director, Office of
Foreign Economic Research.

(FR Doc. 79-8333 Filed 3-19-79; 8:45 am)

[4510-28-M]

(TA-W-4546)

COOPER SPORTSWEAR, NEWARK, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4546: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 21, 1978 in response to a worker petition received on December 14, 1978 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing leather and cloth outerwear for men and boys at Cooper Sportswear, Newark, New Jersey.

The Notice of Investigation was published in the FEDERAL REGISTER on Jan-

uary 9, 1979 (44 FR 2033-2034). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Cooper Sportswear, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

Employment at Cooper Sportswear increased during 1978 compared to 1977. Employment increased in the third and fourth quarter of 1977 compared to the respective quarter of 1976 and in each quarter of 1978 compared to the same quarter of 1977. There was no significant change in average weekly hours worked per employee. There is currently no threat of separations at the firm.

CONCLUSION

After careful review, I determine that all workers of Cooper Sportswear, Newark, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 14th day of March 1979.

JAMES F. TAYLOR,
Director, Office of
Management,

Administration and Planning.

[FR Doc. 79-8334 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4547]

COPPER RANGE CO., CORATEC DIVISION,
PAINESDALE, MICH.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4547: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 21, 1978 in response to a worker petition received on December 18, 1978 which was filed by the United

Steelworkers of America on behalf of workers and former workers fabricating, repairing and assembling underground mining equipment at the Coratec Division, Painesdale, Michigan facility of the Copper Range Company. The Department's investigation revealed that the Coratec Division primarily produced personnel carriers, and front end loaders.

The Notice of Investigation was published in the FEDERAL REGISTER on January 9, 1979 (44 FR 2033). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Copper Range Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The petitioners allege that increased imports of copper adversely affected production and employment at White Pine Copper Company, and thereby adversely affected production and employment at Copper Range Company Coratec Division. Although White Pine and Copper Range are corporately affiliated, the preponderance of Copper Range Coratec Division sales in 1977 and 1978 were to unaffiliated companies.

Therefore, production at Copper Range Coratec Division cannot be considered integrated into production at White Pine.

Imported copper cannot be considered like or directly competitive with utility vehicles for underground service or front end loaders. Imports of utility vehicles for underground service (personnel carriers) and imports of front end loaders must be considered in determining import injury to workers producing personnel carriers and front end loaders.

U.S. imports of utility vehicles for underground service, (personnel carriers), have been negligible. They are a specialized and unique vehicle. Import competition is limited by the cost of shipping these large heavy vehicles, by the unavailability of parts and service and by the necessity for equipment to meet federal mine health and safety

standards set by the Department of Labor.

With respect to front end loaders a Department of Labor survey revealed that none of the customers of Copper Range Company had ever purchased or intended to purchase imported front end loaders.

CONCLUSION

After careful review, I determine that all workers at the Coratec Division, Painesdale, Michigan facility of the Copper Range Company, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of March 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-8335 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4773]

DAVIS CASKET CO., AMERICUS, GA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4773: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on February 1, 1979 in response to a worker petition received on January 24, 1979 which was filed on behalf of workers and former workers producing interior departments of caskets at the Davis Casket Company, Americus, Georgia. The investigation revealed that the plant produces caskets and casket interiors.

The Notice of Investigation was published in the FEDERAL REGISTER on February 9, 1979 (44 FR 8381). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Davis Casket Company, the Casket Manufacturers Association of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

There are no significant imports of caskets or casket interiors.

CONCLUSION

After careful review, I determine that all workers of the Davis Casket Company, Americus, Georgia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of March 1979.

C. MICHAEL AHO,
Director, Office of
Foreign Economic Research.

[FR Doc. 79-8336 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4556]

E. I. DUPONT DE NEMOURS & Co.,
Old Hickory, Tenn.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4556: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 28, 1978 in response to a worker petition received on December 20, 1978 which was filed by the Old Hickory Employees Council on behalf of workers and former workers producing polyester and dacron yarn and staple at the Old Hickory, Tennessee site of E. I. DuPont de Nemours & Company. The investigation revealed that the plant primarily produces dimethyl terephthalate (DMT), Dacron staple, Dacron filament yarn, Dacron flake and three spunbonded products known under the DuPont trademarks Typar, Reemay, and Sontara.

The Notice of Investigation was published in the FEDERAL REGISTER on January 5, 1979 (44 FR 1485). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of E. I. DuPont de Nemours & Company, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility

requirements of Section 222 of the Act must be met. With respect to, Dacron yarn, Dacron flake and spunbonded products, without regard to whether any of the other criteria have been met, the following criterion has not been met:

that sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales and production of Dacron yarn increased in quantity in 1978 compared with 1977.

Sales and production of Dacron flake increased in quantity in 1978 compared with 1977.

Sales and production of spunbonded products increased in quantity in 1978 compared with 1977.

With respect to Dacron staple, without regard to whether any of the criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Imports of articles like or directly competitive with staple produced by DuPont at Old Hickory, Tennessee supply only a very small percentage of the domestic staple market. The ratio of imports to domestic production of nylon, polyester, acrylic, and noncellulosic staple and tow fiber has been below three percent in every year since 1974.

CONCLUSION

After careful review, I determine that all workers of the Old Hickory, Tennessee site of E. I. DuPont de Nemours & Company, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 14th day of March 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.

[FR Doc. 79-8337 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4697]

FORREST CITY FASHIONS, FORREST CITY, ARK.

Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4697: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 15, 1979 in response to a worker petition received on January 3, 1979 which was filed on behalf of workers and former workers producing blouses at Forrest City Fashions, Forrest City, Arkansas, a plant of the Butte Knitting Mills Division of Jonathan Logan, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on January 26, 1979 (44 FR 5533). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Butte Knitting Mills, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Evidence developed during the course of the investigation revealed that Forrest City Fashions is a cutting and sewing factory for Butte Knitting Mills. Forrest City produces blouses which are sold through the Butte Knitting Mills Division as part of the Butte Knit lines of ladies' suits.

U.S. imports of women's, misses' and children's blouses and shirts increased from 26,113 thousand dozen in 1975 to 30,273 thousand dozen in 1976, to 30,849 thousand dozen in 1977 and to 35,823 thousand dozen in 1978.

A Departmental survey of customers of Butte Knitting Mills revealed that several customers decreased their purchases of ladies' dresses and suits, which includes blouses, from Butte Knitting Mills and increased their purchases from foreign sources in 1977 compared to 1976 and in 1978 compared to 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' blouses produced at the Forrest City Fashions, Forrest City, Arkansas plant of Butte Knitting Mills contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

"All workers of the Forrest City Fashions, Forrest City, Arkansas plant of the Butte Knitting Mills Division of Jonathan Logan, Incorporated who became totally or partially separated from employment on or after December 28, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 13th day of March 1979.

C. MICHAEL AHO,
Director, Office of
Foreign Economic Research.

[FR Doc. 79-8338 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4213]

GAF CORP., ROCKVILLE, CONN.

**Negative Determination Regarding Eligibility
to Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4213: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 26, 1978 in response to a worker petition received on September 22, 1978 which was filed on behalf of workers and former workers producing paper makers felt at the Rockville, Connecticut plant of the GAF Corporation. The investigation revealed that the plant produced paper makers felt belts.

The Notice of Investigation was published in the FEDERAL REGISTER on October 10, 1978 (43 FR 46591-92). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of GAF Corporation, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

Imported photographic equipment can not be considered like or directly competitive with the paper maker felt belts produced at the Rockville plant of GAF. Imports of paper makers felt must be considered in this case.

U.S. imports of paper makers felt decreased both absolutely and relative to domestic production from 1976 to 1977. The ratio of imports to domestic production was less than one-half of one percent from 1975 through 1977.

The Rockville plant ceased operations in December 1977.

The company from whom the Rockville plant leased floor space decided to expand its own operations and therefore did not renew the lease. A management study was conducted and it was decided it was not economically feasible to move the equipment from the Rockville plant to another facility.

CONCLUSION

After careful review, I determine that all workers of the Rockville, Connecticut plant of the GAF Corporation are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 14th day of March 1979.

JAMES F. TAYLOR,
Director, Office of Management
Administration and Planning.

[FR Doc. 79-8339 Filed 3-19-79; 8:45 a.m.]

[4510-28-M]

[TA-W-4519]

**HILLS BROTHERS COFFEE, INC., EDGEWATER,
N.J.**

**Negative Determination Regarding Eligibility
to Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4519: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 14, 1978 in response to a worker petition received on December 11, 1978 which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers and former workers producing coffee, cocoa, instant coffee and beverages at Hills Brothers Coffee, Incorporated, Edgewater, New Jersey. The investigation revealed that instant coffee is not produced at either the Edgewater, New Jersey or Hills' San Francisco, California plant. Instant coffee is imported from Brazil and shipped to the Edgewater, New Jersey and the San Francisco, California plants where it is packaged and distributed.

The Notice of Investigation was published in the FEDERAL REGISTER on December 26, 1978 (43 FR 60243). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Hills Brothers Coffee, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The average number of production workers at Hills Brothers Coffee, Incorporated, Edgewater, New Jersey increased in 1978 compared to 1977. Compared to the same quarter of the previous year, employment at the plant has increased each quarter from the fourth quarter of 1977 through the fourth quarter of 1978.

Layoffs at Hills Brothers Coffee, Incorporated, Edgewater, New Jersey are seasonal and occur as a result of the decline in coffee consumption during the spring and summer months.

CONCLUSION

After careful review, I determine that all workers of Hills Brothers Incorporated, Edgewater, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 15th day of March 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-8340 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4541]

**MASTER CORPORATION OF TEXAS, ABILENE,
TEX.**

**Negative Determination Regarding Eligibility
to Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4541: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 19, 1978 in response to a worker petition received on December 14, 1978 which was filed on behalf of workers and former workers producing deep fryers and air corn poppers at Master Corporation of Texas, Abilene, Texas, a subsidiary of National Presto Industries, Inc., Eau Claire, Wisconsin. The investigation revealed that the plant primarily produced deep fryers,

hamburger cookers, portable heaters, portable ranges and corn poppers.

The Notice of Investigation was published in the *FEDERAL REGISTER* on December 29, 1978 (43 FR 61039). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of National Presto Industries, Inc., its competitors, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Housewares Manufacturers Association, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that U.S. imports of deep fryers, hamburger cookers, portable heaters and corn poppers were negligible in 1977 and 1978.

One reason is the fact that foreign manufacturers have difficulty meeting Underwriters Laboratory (UL) requirements for these products.

Decline in consumer demand coupled with the saturation of the market has adversely affected sales by National Presto Industries, causing them to close Master Corporation in November 1978 and consolidate production at the remaining three subsidiaries.

National Presto Industries imports some hot air corn poppers which are considerably higher priced than those produced by the subject firm. However, production of corn poppers was an insignificant percentage of total production at Master Corporation in the 1976-1978 period.

CONCLUSION

After careful review, I determine that all workers of Master Corporation of Texas, Abilene, Texas are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 14th day of March 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-8341 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4703]

MONIQUE BRASSIERE CO., BROOKLYN, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4703: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 15, 1979 in response to a worker petition received on January 9, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing brassieres and girdles at Monique Brassiere Company, Brooklyn, New York. The investigation revealed that the plant primarily produces brassieres.

The Notice of Investigation was published in the *FEDERAL REGISTER* on January 26, 1979 (43 FR 5533). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Monique Brassiere Company, its customers, manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of brassieres, bralettes, and bandeaux increased absolutely and relative to domestic production from 1975 to 1976 and from 1976 to 1977. Imports increased absolutely in the first nine months of 1978 compared to the first nine months of 1977.

Monique produced primarily large-size brassieres which have a limited market and are not susceptible to the degree of import competition typical of mass market items.

A survey by the Department of Monique Brassiere Company customers revealed that they generally catered to larger women and that none of the customers imported brassieres while contracting work with the subject firm in 1976, 1977 or 1978.

CONCLUSION

After careful review, I determine that all workers of Monique Brassiere Company, Brooklyn, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 14th day of March 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-8342 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4495]

NIEMOR CONTRACTOR

Newark, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4495: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 8, 1978 in response to a worker petition received on December 4, 1978 which was filed on behalf of workers and former workers producing men's and boys' cloth coats (some ladies') leather and suede coats for men and boys at Niemor Contractor, Newark, New Jersey. The investigation revealed that the plant primarily produces men's and boys' cloth and leather coats and jackets.

The Notice of Investigation was published in the *FEDERAL REGISTER* on December 19, 1978 (43 FR 59179-59180). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Cooper Sportswear, its customers, Niemor Contractor, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met for workers producing leather coats and jackets.

Imports of men's, women's, boys', misses', juniors' and children's leather coats increased absolutely in value in 1977 compared to 1976 and in January-September 1978 compared to the same period of 1977.

Niemor Contractor ships its output exclusively to one apparel manufacturer. Several surveyed customers of that manufacturer who purchased men's and boys' cloth and leather coats and jackets decreased purchases from the jobber and increased purchases from foreign sources.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's and boys' leather coats and jackets produced at Niemor Contractor, Newark, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Niemor Contractor, Newark, New Jersey, engaged in employment related to the production of leather coats and jackets who became totally or partially separated from employment on or after November 28, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 14th day of March 1979.

JAMES F. TAYLOR,

*Director, Office of Management
Administration and Planning.*

[FR Doc. 79-8343 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4147]

NIPAK, INC., PRYOR, OKLA.

Negative Determination on Reconsideration

On February 7, 1979, the Department made an Affirmative Determination Regarding Application for Reconsideration for former workers of Nipak, Inc., Pryor, Oklahoma. This determination was published in the FEDERAL REGISTER on February 13, 1979, (44 FR 9445).

The petitioning union claimed that if the Department had conducted a survey of a cross section of Nipak's customers, instead of a survey of major customers, a different picture would have developed and the Department would have issued a certification instead of a denial.

In its reconsideration, the Department conducted a large random survey of Nipak's customers. This survey, like the former survey of major customers, revealed that imports of fertilizer played a de minimus role in the purchasing patterns of Nipak's customers. There was no evidence that Nipak's customers switched to imported fertilizer. Customer comments indicated that imports were not a factor in their purchases from Nipak, Inc.

CONCLUSION

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to former workers of Nipak, Inc., Pryor, Oklahoma.

Signed at Washington, D.C., this 13th day of March 1979.

C. MICHAEL AHO,

*Director, Office of
Foreign Economic Research.*

[FR Doc. 79-8344 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4725]

PILLING CHAIN CO., INC., BARRINGTON, R.I.

Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4725: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 18, 1979 in response to a worker petition received on January 16, 1979 which was filed by the United Textile Workers Union of America on behalf of workers and former workers producing zipper sliders at Pilling Chain Company, Incorporated, Barrington, Rhode Island.

The Notice of Investigation was published in the FEDERAL REGISTER on January 26, 1979 (44 FR 5533). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Pilling Chain Company, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of sliders for zippers increased in 1977 compared to 1976, and in 1978 compared to 1977.

A survey conducted by the Department revealed that two major customers of Pilling Chain reduced purchases of zipper sliders from Pilling relative to purchases from foreign sources in 1978 compared to 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with zipper

sliders produced at Pilling Chain Company, Incorporated, Barrington, Rhode Island contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of Pilling Chain Company, Incorporated, Barrington, Rhode Island who became totally or partially separated from employment on or after January 12, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 14th day of March 1979.

HARRY J. GILMAN,

*Supervisory International
Economist, Office of Foreign
Economic Research.*

[FR Doc. 79-8345 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4624]

ROYAL COAL CO., CLAIRMONT PREPARATION PLANT, CLAIRMONT, W. VA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4624: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 8, 1979 in response to a worker petition received on December 18, 1978 which was filed by the United Mine Workers of America, in part on behalf of workers and former workers cleaning metallurgical coal at the Clairmont Preparation Plant of Royal Coal Company, Clairmont, West Virginia.

The Notice of Investigation was published in the FEDERAL REGISTER on January 19, 1979 (44 FR 4029-30). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Royal Coal Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have

become totally or partially separated, or are threatened to become totally or partially separated.

Average employment of production workers at the Clairmont Preparation Plant increased from 1976 to 1977. Workers at the plant were on strike between December 6, 1977 and March 27, 1978. Employment increased in the April-November period of 1978 compared to the same period of 1977. Employment was higher in the fourth quarter of 1978 than in any other quarter in the 1976 to 1978 period. Average weekly hours worked per employee did not change significantly during this period. There is no immediate threat of separation of workers at this plant.

CONCLUSION

After careful review, I determine that all workers at the Clairmont Preparation Plant of Royal Coal Company, Clairmont, West Virginia, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of March 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration, and Planning.

[FR Doc. 79-8346 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4552]

S & M LEATHER COAT CO., TRENTON, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4552: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 21, 1978 in response to a worker petition received on December 14, 1978 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing men's leather garments at S and M Leather Coat Company, Trenton, New Jersey. The investigation revealed that the plant primarily produces men's and boys' leather coats and jackets.

The Notice of Investigation was published in the FEDERAL REGISTER on January 9, 1979 (44 FR 2033-2034). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Cooper Sportswear, its customers, S & M Leather Coat Company, the U.S. Department of Com-

merce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of men's, women's, boys', misses', juniors' and children's leather coats and jackets increased absolutely in value in 1977 compared to 1976 and in January-September 1978 compared to the same period of 1977.

S & M Leather Coat Company ships its production exclusively to one apparel manufacturer for distribution. Several surveyed customers of that manufacturer who purchased men's and boys' leather coats and jackets decreased purchases from the jobber and increased purchases from foreign sources.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's and boys' leather coats and jackets produced at S & M Leather Coat Company, Trenton, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of S & M Leather Coat Company, Trenton, New Jersey who became totally or partially separated from employment on or after December 12, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 14th day of March 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration, and Planning.

[FR Doc. 79-8347 Filed 3-19-79; 8:45 am]

[4510-28-M]

[TA-W-4761 and 4762]

SKYLAND VIRGINIA CORP., CHILHOWIE, VA., MARION, VA.

Negative Determinations Regarding eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4761 and TA-W-4762: Investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigations were initiated on January 29, 1979 in response to worker

petitions received on January 22, 1979 which were filed on behalf of workers and former workers producing woven children's clothing at the Chilhowie, Virginia and at the Marion, Virginia plants of Skyland Virginia Corporation, a division of Skyland International Corporation, Chattanooga, Tennessee. The investigation revealed that each plant produces children's woven pants, woven skirts and woven brush denim jackets.

The Notice of Investigation was published in the FEDERAL REGISTER on February 6, 1979 (44 FR 7249). No public hearing was requested and none was held.

The determinations were based upon information obtained principally from officials of Skyland International Corporation, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met with respect to the Chilhowie, Virginia plant of Skyland Virginia Corporation:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Skyland Virginia Corporation, a division of Skyland International Corporation, consists of the Chilhowie and the Marion, Virginia plants. Production and employment declines that occurred at the Chilhowie, Virginia plant of Skyland Virginia Corporation were mitigated by increases in production and employment at the Marion, Virginia plant of Skyland Virginia Corporation. The Chilhowie and the Marion plants both produce children's woven pants, woven skirts and woven brush denim jackets.

Production of children's woven pants, skirts and brush denim jackets declined at the Chilhowie plant from 1976 to 1977, and during the first and third quarters of 1978 compared to the corresponding quarter of 1977. Production at this plant then increased in the fourth quarter of 1978 as compared to the same quarter of 1977.

Skyland Virginia Corporation's production of children's woven pants, woven skirts and woven brush denim jackets increased, in quantity, in 1978 as compared to 1977. Production at the Marion plant increased, in quantity, in each quarter of 1978 compared to the corresponding quarter of 1977, more than offsetting the quarterly de-

clines that occurred at the Chilhowie plant.

Company-wide sales of children's woven and knitted clothing by Skyland International Corporation increased, in value, in 1977 compared to 1976 and in 1978 compared to 1977. Sales and production are equivalent at Skyland International Corporation.

With respect to the Marion, Virginia plant of Skyland Virginia Corporation, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales of children's clothing increased in value at Skyland International Corporation in 1977 compared with 1976 and 1978 compared to 1977. Production of children's woven pants, skirts and brush denim jackets increased at the Marion, Virginia plant of Skyland Virginia Corporation in 1978 compared to 1977. Production at the Marion, Virginia plant increased in each quarter of 1978 compared to the corresponding quarter of 1977.

CONCLUSION

After careful review, I determine that all workers at the Chilhowie, Virginia plant and at the Marion, Virginia plant of Skyland Virginia Corporation, a division of Skyland International Corporation, Chattanooga, Tennessee are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of March 1979.

C. MICHAEL AHO,
Director, Office of
Foreign Economic Research.

[FR Doc. 79-8348 Filed 3-19-79; 8:45 a.m.]

[4510-28-M]

[TA-W-4717]

UNIVERSITY CLOTHING CORP., SOMERVILLE,
MASS.

Negative Determination Regarding Eligibility
To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4717: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 16, 1979 in response to a worker petition received on January 15, 1979 which was filed on behalf of workers and former workers producing men and women's raincoats (mostly men's) at University Clothing Corporation, Somerville, Massachusetts. The

investigation revealed that the company location is Somerville, Massachusetts. The investigation further revealed that the plant primarily produces men's raincoats.

The Notice of Investigation was published in the FEDERAL REGISTER on January 26, 1979 (44 FR 5534). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of University Clothing Corporation, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales and production at University Clothing Corporation increased in 1978 compared with 1977.

CONCLUSION

After careful review, I determine that all workers of University Clothing Corporation, Somerville, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 15th day of March 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-8349 Filed 3-19-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFETY,
SUBCOMMITTEE ON CONSIDERATION
OF CLASS-9 ACCIDENTS

Meeting

The ACRS Subcommittee on Consideration of Class-9 Accidents will hold an open meeting on April 4, 1979 in Room 1046, 1717 H St., N.W., Washington, DC 20555. Notice of this meeting was published on February 28, 1979 (44 FR 11279).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those

portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, April 4, 1979, 2:00 p.m. until the conclusion of business.

The Subcommittee will meet in Executive Session, with any of its consultants who may be present, to discuss a plan of action for arriving at a recommendation to the full Committee on the role Class-9 Accidents should have in the licensing process.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Gary Quittschreiber, (telephone 202-634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: March 14, 1979.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 79-8174 Filed 3-19-79; 8:45 am]

[7590-01-M]

ADVISORY COMMITTEE ON REACTOR SAFETY,
SUBCOMMITTEE ON POWER AND
ELECTRICAL SYSTEMS

Meeting

The ACRS Subcommittee on Power and Electrical Systems will hold a meeting on March 30, 1979 at the Aloha Inn, 3901 E. Van Buren St., Phoenix, AZ 85008 to review the potential adverse interactions through the interconnection of protection and safety systems with reactor control systems on the Westinghouse RESAR-414 design. Notice of this meeting was published on February 28, 1979 (44 FR 11279).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated

Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Friday, March 30, 1979, 8:30 a.m. until the conclusion of business.

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, Westinghouse, and their consultants, pertinent to this review. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Gary Quittschreiber, (telephone 202-634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555.

Dated: March 14, 1979.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 79-8173 Filed 3-19-79; 8:45 am]

[7590-01-M]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, PROCEDURES SUBCOMMITTEE

Meeting

The ACRS Procedures Subcommittee will hold an open meeting on April

4, 1979 in Room 1010, 1717 H St., N.W., Washington, DC 20555.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, April 4, 1979, 5:30 p.m. until the conclusion of business.

The Subcommittee will meet in Executive Session to discuss the role and responsibility of the ACRS in the regulatory process. The proposal that the ACRS discontinue the practice of referencing unresolved ACRS generic items in its project reports will also be discussed.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Raymond F. Fraley, (telephone 202/634-3265) between 8:15 a.m. and 5:00 p.m., EST.

Dated: March 14, 1979.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 79-8171 Filed 3-19-79; 8:45 am]

[7590-01-M]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON REGULATORY ACTIVITIES

Meeting

The ACRS Subcommittee on Regulatory Activities will hold an open meeting, on April 4, 1979, in Room 1046, 1717 H St., N.W., Washington, DC 20555. Notice of this meeting was published in the FEDERAL REGISTER on February 28, 1979 (44 FR 11280).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978 (43 FR 45926) oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as

practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows: *Wednesday, April 4, 1979, the meeting will commence at 8:45 a.m.*

The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to the following:

(1) Proposed Regulatory Guide, "Cable Penetration Fire Stop Qualification Test for Nuclear Power Plants" (Pre Comment)

(2) Proposed Regulatory Guide 1.58, Revision 1, "Qualification of Nuclear Power Plant Inspection, Examination, and Testing Personnel" (Pre Comment)

(3) Proposed Regulatory Guide 1.131, Revision 1, "Qualification Tests of Electric Cables, and Field Splices, for Light-Water-Cooled Nuclear Power Plants" (Pre Comment)

(4) Regulatory Guide 1.140, Revision 1, "Design, Testing, and Maintenance Criteria for Normal Ventilation Exhaust System Air Filtration and Adsorption Units of Light-Water-Cooled Nuclear Power Plants" (Post Comment)

Other matters which may be of a predecisional nature relevant to reactor operation or licensing activities may be discussed following this session.

Persons wishing to submit written statements regarding Regulatory Guide 1.140, Revision 1, may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. However, to insure that adequate time is available for full consideration of these comments at the meeting, it is desirable to send a readily reproducible copy of the comments as far in advance of the meeting as practicable to Mr. Gary R. Quittschreiber (ACRS), the Designated Federal Employee for the meeting, in care of ACRS, Nuclear Regulatory Commission, Washington, D.C. 20555 or telecopy them to the Designated Federal Employee (202-634-3319) as far in advance of the meeting as practicable. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Gary R. Quittschreiber, (telephone

202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: March 14, 1979.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 79-8170 Filed 3-19-79; 8:45 am]

[7590-01-M]

APPLICATIONS FOR LICENSES TO EXPORT NUCLEAR FACILITIES OR MATERIALS

Pursuant to 10 CFR 110.70, "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory

Commission's Public Document Room located at 1717 H Street NW., Washington, D.C.

Dated: March 12, 1979, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

GERALD G. OPLINGER,
Assistant Director, Export/
Import and International
Safeguards, Office of International Programs.

Name of applicant, date of application, date received, application number	Material type	Material in Kilograms		End-use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., Feb. 28, 1979, Mar. 1, 1979, XSNMO1469.	3.25 enriched uranium....	14,101	458.283	Reload fuel ringhals 2	Sweden.
Westinghouse Electric, Feb. 27, 1979, Mar. 2, 1979, XSNMO1471.	3.6 enriched uranium.....	121,000	4,300	Initial core and 3 reloads to Philippine Nuclear Power Plant Unit No. 1.	Philippines.
Westinghouse Electric, Mar. 1, 1979, Mar. 5, 1979, XSNMO1472.	3.5 enriched uranium.....	727,175	25,005	Initial core, plus 40 reloads for South Korea. Kori-2.	South Korea.
Marubeni America Corp., Mar. 2, 1979, Mar. 6, 1979, XSNMO1473.	3.9 enriched uranium.....	3,799	102	Fuel for Fukushima I, Unit No. 4.	Japan.

[FR Doc. 79-8176 Filed 3-19-79; 8:45 am]

[7590-01-M]

[Docket Nos. STN 50-568-A and STN 50-569-A]

NEW ENGLAND POWER CO., ET AL.

Receipt of Addition Antitrust Information: Time for Submission of Views on Antitrust Matters

New England Power Company, Bangor Hydro-Electric Company, Canal Electric Company, Fitchburg Gas & Electric Light Company, Maine Public Service Company, Massachusetts Municipal Wholesale Electric Company, Montaup Electric Company, Narragansett Electric Company, Taunton Municipal Lighting Plant, and Vermont Electric Cooperative, Inc., (applicants) pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, filed on January 15, 1979, information requested by the Attorney General for Antitrust Review as required by 10 CFR Part 50, Appendix L. The information concerns two additional ownership participants, Maine Public Service Company and Massachusetts Municipal Wholesale Electric Company of the New England Power Project, Units 1 and 2 to be located in Washington County in Charlestown, Rhode Island.

The information was filed in connection with the application for construction permits filed by the New England Power Company.

Notice of Receipt of the Antitrust Application was published in the FEDERAL REGISTER under Docket No. P-533-A on July 7, 1975 (40 FR 28510).

A copy of the letter, dated January 15, 1979, filed by the New England Power Company is available for public inspection and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and in the local public document rooms located at the Cross Mill Public Library, Old Post Road, Charlestown, Rhode Island 02813 and the University of Rhode Island, University Library, Government Publications Office, Kingston, Rhode Island 02881.

Any person who wishes to have his views on the antitrust matters with respect to the Massachusetts Municipal Wholesale Electric Company and Maine Public Service Company presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation, on or before May 21, 1979.

Dated at Bethesda, Maryland, this 12th day of March, 1979.

For the Nuclear Regulatory Commission.

OLAN D. PARR,
Chief, Light Water Reactors
Branch No. 3, Division of Project Management.

[FR Doc. 79-8175 Filed 3-19-79; 8:45 am]

[7715-01-M]

POSTAL RATE COMMISSION

[Order No. 247; Docket No. A79-8]

OVERLY, N. DAK. 58360 (THE JOHNSONS, PETITIONERS)

Order of Filing of Appeal

MARCH 15, 1979.

On March 12, 1979, the Commission received a handwritten letter from the Johnsons (hereinafter "Petitioners") on behalf of themselves and other similarly situated concerning alleged U.S. Postal Service plans to close the Overly, North Dakota post office. On the same day the Commission received two (2) other appeal letters from members of the Overly community which are being consolidated with that of the Johnsons for convenience. Although the letter makes no explicit reference to the Postal Reorganization Act, we believe it should be liberally construed as a petition for review pursuant to section 404(b) of the Act (39 U.S.C. 404(b)), so as to preserve petitioners' right to appeal which is subject to a 30-day time limit.¹ Since the petition

¹39 U.S.C. 404(b)(5). 39 U.S.C. 404(b) was added to title 39 by Pub. L. 94-421 (September 24, 1976), 90 Stat. 1310-1311. Our rules of practice governing these cases appear at 39 CFR 3001.110 et seq.

NOTICES

was apparently written by a layman rather than an attorney, it does not conform perfectly with the Commission's rules of practice which also require a petitioner to attach a copy of the Postal Service's final determination to the petition.² However, section 1 of the Commission's rules of practice calls for a liberal construction of the rules to secure just and speedy determination of issues.³

The Act requires that the Postal Service provide the affected community with at least 60 days' notice of a proposed post office closing so as to "insure that such persons will have an opportunity to present their views."⁴ The petition requests that the decision to close the Overly post office be reversed. From the face of the petition it is unclear whether the Postal Service provided 60 days' notice, whether any hearings were held, and whether a determination has been made under 39 U.S.C. 404(b)(3). (Petitioners failed to supply a copy of the Postal Service's final determination, if one is in existence.) The Commission's rules of practice require the Postal Service to file the administrative record of the case within 15 days after the date on which the petition for review is filed with the Commission.⁵

The Postal Reorganization Act states:

The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.⁶

Section 404(b)(2)(C) of the Act specifically includes consideration of this goal in determinations by the Postal Service to close post offices. Petitioners assert that the Overly post office is the identity of the town and that they depend on its existence. The effect "on the community" of a post office closing is made a mandatory subject for consideration by section 404(b)(2)(A) of the Act. The petition appears to set forth the Postal Service action complained of in sufficient detail to warrant further inquiry to determine whether the Postal Service complied with its regulations for the discontinuance of post offices.⁷

²39 CFR 3001.111(a).

³39 CFR 3001.1.

⁴39 U.S.C. 404(b)(1).

⁵39 CFR 3001.113(a). The Postal Rate Commission informs the Postal Service of its receipt of such an appeal by issuing PRC Form No. 56 to the Postal Service upon receipt of each appeal.

⁶39 U.S.C. 101(b).

⁷42 FR 59079-59085 (11/17/77); the Commission's standard of review is set forth at 39 U.S.C. 404(b)(5).

The Act does not contemplate appointment of an Officer of the Commission in section 404(b) cases, and none is being appointed.⁸

The Commission Orders:

(A) The letter of March 12, 1979, from the Johnsons shall be construed as a petition for review pursuant to section 40(b) of the Act (39 U.S.C. 404(b)). The two (2) other letters of March 12, 1979, will be consolidated with the Johnsons' petition.

(B) The Secretary of the Commission shall publish this Notice and Order in the FEDERAL REGISTER.

(C) The Postal Service shall file the administrative record in this case on or before March 27, 1979, pursuant to the Commission's rules of practice (39 CFR 3001.113(a)).

By the Commission.

DAVID F. HARRIS,
Secretary.

APPENDIX

March 12, 1979	Filing of Petition.
March 15, 1979	Notice and Order of Filing of Appeal.
March 27, 1979	Filing of record by Postal Service [see 39 CFR § 3001.113(a)].
April 2, 1979	Last day for filing of petitions to intervene [see 39 CFR § 3001.111(b)].
April 11, 1979	Petitioners' initial brief [see 39 CFR § 3001.115(a)].
April 26, 1979	Postal Service answering brief [see 39 CFR § 3001.115(b)].
May 11, 1979	(1) Petitioners' reply brief, if petitioners choose to file such brief [see 39 CFR § 3001.115(c)]. (2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interests of prompt and just decision may require, in scheduling or dispensing with oral argument.
July 10, 1979	Expiration of 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)].

[FR Doc. 79-8354 Filed 3-19-79; 8:45 am]

[6560-24-M]

THE REGULATORY COUNCIL

CALENDAR OF FEDERAL REGULATIONS

Correction

AGENCY: The Regulatory Council.

ACTION: Correction of Calendar of Federal Regulations.

SUMMARY: In FR Doc. 79-5969, appearing at 11388 in the FEDERAL REGISTER for Wednesday, February 28, 1979, on 11458, in the third column, in the last sentence of the paragraph entitled "Major Alternatives Under Study," please change "now" to "not".

⁸In the Matter of Gresham, S.C., Route No. 1, Docket No. A78-1 (May 11, 1978).

Dated: March 14, 1979.

MARK G. SCHOENBERG,
Calendar Coordinator,
The Regulatory Council.

FR Doc. 79-8201 Filed 3-19-79; 8:45 am]

[7715-01-M]

CALENDAR OF FEDERAL REGULATIONS

Correction

AGENCY: The Regulatory Council.

ACTION: Correction of the Calendar of Federal Regulations.

SUMMARY: In FR Doc. 79-5969 appearing at page 11469 in the FEDERAL REGISTER of Wednesday, February 28, 1979, in the entry "U.S. Postal Service Request for a Recommended Decision on Establishing an Electronic Computer Originated Mail (ECOM) Subclass, Docket MC78-3, Filed with the Commission on September 8, 1978," the following change should be made:

On page 11469, column 1, the fourth and fifth sentences under the section entitled "Estimate and Summary of Economic Effects" are corrected as follows:

"If the Commission recommends the Service's request, then there is a legal question whether electronic messages will fall under the Private Express Statutes, which prohibit private carriage of mail. The Commission is requesting legal memoranda from the parties to the proceeding to help resolve this question of law."

Dated: March 15, 1979.

MARK G. SCHOENBERG,
Calendar Coordinator,
the Regulatory Council.

[FR Doc. 79-8369 Filed 3-19-79; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15619; File No. SR-MSTS-79-11]

MIDWEST SECURITIES TRUST CO.

Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, Section 16 (June 4, 1975), notice is hereby given that on February 22, 1979, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

TEXT OF PROPOSED RULE CHANGE
(MSTC Fee Increases)

Settlement Services	Old	New
CNS interactivity movement:		
Long	0.70	0.75
Short	.70	.75
Depository delivery instruction (DDI)	*.77	*.79
Depository Services		
Deposits:		
a.m. (to 11 a.m.)	.70	.75
p.m. (to 11:30-5:30 p.m.)	.35	.60
Withdrawals:		
Regular	*2.00	*2.65
Demand	*2.50	*3.15
Safekeeping:		
Per issue/month	.45	.49
Per 1,000 share	.020	.025
Pledge loan items:		
Pledge	.40	.45
Release	.40	.45
Accommodation transfers	2.50	5.00
Monthly Service Charge		
Account maintenance fee	150.00	157.00

* Exclusive of .10/item keypunch input fee (not charged when Communications System terminal is used for input.)

For a detailed explanation of the individual services, refer to Section 27, Subject No. 27 of the MST System Operations Handbook.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed rule change is a new Midwest Securities Trust Company ("MSTC") pricing schedule that incorporates new price increases as a result of near double digit inflation during 1978, required increases in controls and audit support, and the need for continued product enhancement. The effective date of these changes will be March 1, 1979.

The proposed rule change represents an equitable allocation of reasonable dues among its participants. It also assures prompt and accurate clearance and settlement of security transactions and fosters cooperation and coordination among persons engaged in the clearance and settlement of security transactions by making the Midwest Securities Trust Company more competitive.

MSTC believes that the proposed rule change will not impose any burdens on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before April 10, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,

MARCH 7, 1979.

Secretary.

[FR Doc. 79-8199 Filed 3-19-79; 8:45 am]

[8010-01-M]

[Rel. No. 20947; 70-6261]

WEST TEXAS UTILITIES CO.

Proposed Change in Calculation of Earned Surplus Available for Dividends Under Supplemental Indentures and Proposed Dividend to Parent

MARCH 6, 1979.

NOTICE IS HEREBY GIVEN that West Texas Utilities Company ("WTU"), P. O. Box 841, Abilene, Texas 79604, an electric utility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, has filed with this Commission a declaration and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act as applicable to the proposed transactions. All interested persons are referred to the declaration, as amended, which is summarized below, for a complete statement of the proposed transactions.

WTU seeks authorization to pay to its parent CSW additional dividends on its common stock under the terms of its indenture, dated August 1, 1943 (the "Indenture"), as amended and supplemented by supplemental indentures dated January 1, 1958, February 1, 1961, January 1, 1969, and July 1, 1973 (the "Supplemental Indentures"). The Supplemental Indentures in each case prohibit the payment of dividends on common stock (with stated exceptions) in excess of the sum of (a) earned surplus determined as

provided in the Supplemental Indentures earned after a specified date (in each case immediately prior to the date of that Supplemental Indenture); (b) a stated dollar amount of earned surplus at such specified date (equivalent to estimated dividends on common and preferred stocks for the 12 months beginning with the date of such Supplemental Indenture); and (c) such additional amount as may be authorized by this Commission under the Act pursuant to application by WTU.

A clause in each Supplemental Indenture requires (with slight variations in language) that in determining earned surplus earned after the specified date:

(i) the amounts to be deducted from the total gross earnings and income for maintenance and repairs and as charges or provisions for depreciation, retirements, renewals and replacements and/or amortization, shall be not less in the aggregate than an amount equal to fifteen per centum (15%) of the gross operating revenues derived by WTU during such period from the operation of electric, gas and water utility properties subject to the lien of this Indenture (after deducting from such revenues an amount equal to the cost of electricity, gas and water purchased during such period for exchange or resale), and (ii) the amounts to be so deducted as charges or provisions for depreciation, retirements, renewals and replacements and/or amortization, shall be not less in the aggregate than an amount equal to the required percentage (as defined elsewhere within the Indenture, as amended), of the arithmetical average of the amount of depreciable property (as defined within the Indenture) of WTU at the beginning, and the amount thereof at the end, of such period.

Clause (i) quoted above has the effect of inflating deductions from earned surplus when revenues are inflated by fuel cost recoveries. Over the last five years WTU's cost of fuel has risen very rapidly. WTU states that its fuel costs as a percentage of operating revenues (less purchased power) rose from 17.2% to 55.8% from the years December 31, 1973 to December 31, 1977. Since WTU has fuel adjustment clauses covering virtually all sales, its operating revenues have been greatly inflated, as has the maintenance and renewal fund requirement and the related retained earnings deduction. WTU anticipates that this inflation will begin to restrict its ability to maintain its traditional dividend payout ratio sometime in 1980. Such ratio for the last five years was as follows: 1973, 59.8%; 1974, 59.2%; 1975, 58.3%; 1976, 61.5%; and 1977, 64.2%.

WTU requests authorization to pay dividends on its common stock out of earned surplus earned after December 31, 1978, determined as provided in such Supplemental Indentures but after deducting as a minimum only the amounts required under

clause (ii) quoted above (not the amounts required under clause (i)) and utilizing 2.8% as the required percentage for charges of depreciation, retirements, renewals, replacements and/or amortization, said 2.8% being equal to WTU's average depreciation rate on depreciable bondable property for the period January 1, 1973, through December 31, 1978. WTU states that it would accept a further limitation on such authorization that no dividend on common stock could be paid out of such additional earned surplus unless earned during the 12 calendar months immediately preceding its payment.

It should be noted that the dividend restriction in effect under Section 16 of Article III of the Indenture (restrictions also involving minimum deductions for maintenance, etc., based on operating revenues) does not contain a provision expressly permitting the Commission to authorize the payment of dividends on common stock out of otherwise restricted earned surplus. Earned surplus under this restriction is calculated on cumulative basis from 1943 and there is at present a substantial cushion of unrestricted earned surplus accumulated in prior years. If this cushion is exhausted before the

maturity of presently outstanding series of bonds, aggregating \$67,000,000 in principal amount and maturing between 1981 and 2003, WTU could have to redeem the bonds before maturity, attempt legal action to permit deviation from the terms of the restriction, or seek other presently undetermined remedies.

WTU also proposes to pay to CSW, prior to May 31, 1979, an extraordinary dividend on common stock of \$15,000,000. This amount would be (1) borrowed back by WTU on a short-term basis, which matter is the subject of separate application by declarants and affiliates seeking, among other things, a temporary increase in WTU's short-term borrowing authorization (File No. 70-6163), and (2) refinanced sometime in 1979 from the issuance of first mortgage bonds. The purpose of the dividend payment is to bring WTU's capitalization ratios into line with appropriate criteria and to reduce by \$15,000,000 the amount of common stock equity which CSW will have to raise in 1979. WTU's capitalization at September 30, 1978, and as adjusted as of such date for the proposed transaction, is as follows:

(Dollars in millions)

	Actual	Percent	Pro forma	Percent
Common equity				
Common stock	\$54,450		\$54,450	
Retained earnings	36,793		21,793	
Premium on capital stock	291		291	
Total common equity	91,534	55.6	776,534	51.2
Preferred stock	6,000	3.7	6,000	4.0
Long-term debt	67,000	40.7	67,000	44.8
Total capitalization	164,534	100.0	149,534	100.0
Short-term debt	9,000		24,000	

It is requested that this extraordinary dividend be authorized without application of the restrictions to which all other dividends would be subjected (although it would remain subject to Indenture restrictions from which no Commission relief may be obtained), including the earned within 12 months limitation, mentioned previously, which will apply to future dividends.

It is stated that WTU has transmitted a copy of its amended application to Harris Trust and Savings Bank, the trustee under WTU's indenture, and agrees to furnish the trustee a copy of this notice, any amendments to the Form U-1 filed by it in this matter and any orders issued herein.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at \$3,300. It is

stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 29, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in

case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-8198 Filed 3-19-79; 8:45 am]

[4710-09-M]

DEPARTMENT OF STATE

[Public Notice 652]

BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

Proposed Migratory Species Convention Meeting

The Department of State will hold a public meeting on Tuesday, April 10, 1979, at 1:30 P.M. to obtain oral comments on a draft global convention on conservation of migratory species, which has been proposed by the Federal Republic of Germany. The meeting will be held in Room 1912 at the Department of State, 2201 C Street, N.W., Washington, D.C.

Detailed written comments on the proposed convention also may be submitted and may be summarized orally at the April 10 meeting. Comments received on the environmental aspects will assist in the preparation of a draft environmental impact statement on the proposed treaty.

The proposed convention is intended to promote national conservation measures by range states of migratory species which are identified under the convention as in immediate and stringent need of such protection; the convention would also promote conclusion of new international conservation agreements on migratory species among the respective range states, drawing on criteria to be set forth in the convention, so as to maintain or restore a favorable conservation status for those species. The German government has issued invitations to a plenary

potentiary negotiating conference to be held in Bonn on June 11-23, 1979, for the purpose of adopting the convention.

Copies of the draft convention and information about the meeting may be obtained from Mr. Cameron Sanders or Mr. William Mansfield, Office of Environmental Affairs, Department of State, Room 7820, Washington, D.C. 20520 (tel. 202/632-2418).

For the Secretary of State.

WILLIAM ALSTON HAYNE,
Deputy Assistant Secretary
for Environmental Affairs.

MARCH 9, 1979.

[FR Doc. 79-8316 Filed 3-19-79; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Office of the Secretary

ANTIDUMPING; 45 R.P.M. ADAPTORS FROM THE UNITED KINGDOM

Termination of Investigation Based on No Likelihood of Injury

AGENCY: United States Treasury Department.

ACTION: Termination of Antidumping Investigation.

SUMMARY: This notice is to advise the public that an antidumping investigation involving 45 r.p.m. adaptors from the United Kingdom is being terminated. The investigation is being terminated as the result of a finding by the United States International Trade Commission that there is "no reasonable indication of injury or likelihood of injury" to the domestic industry caused by imports of the subject merchandise from the United Kingdom.

EFFECTIVE DATE: March 20, 1979.

FOR FURTHER INFORMATION CONTACT:

Mary S. Clapp, U.S. Customs Service, Office of Operations, Duty Assessment Division, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: On February 2, 1979, and "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER with respect to 45 r.p.m. adaptors from the United Kingdom (44 FR 6824).

The notice stated that Treasury had concluded that there was substantial doubt of injury to, or likelihood of injury to, an industry in the United States by reason of imports of 45 r.p.m. adaptors from the United Kingdom. Accordingly, the United States International Trade Commission was advised of such doubt pursuant to sec-

tion 201(c)(2) of the Antidumping Act of 1921, as amended (19 U.S.C. 160(c)(2)) (hereinafter referred to as the "Act").

The United States International Trade Commission has determined, and on March 2, 1979, it advised the Secretary of the Treasury pursuant to section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)), that there is no reasonable indication that an industry in the United States is being, or is likely to be, injured, or is prevented from being established, by reason of the importation of 45 r.p.m. adaptors, alleged to be sold at less than fair value, from the United Kingdom into the United States. This determination was published in the FEDERAL REGISTER on March 8, 1979 (44 FR 12778).

Accordingly, the antidumping investigation with respect to 45 r.p.m. adaptors from the United Kingdom is hereby terminated, as provided for in section 201(c)(2) of the Act (19 U.S.C. 160(c)(2)).

ROBERT H. MUNDHEIM,
General Counsel
of the Treasury.

MARCH 12, 1979.

[FR Doc. 79-8322 Filed 3-19-79; 8:45 am]

[4810-40-M]

[Dept. Circular Public Debt Series No. 6-79]

TREASURY NOTES OF MARCH 31, 1981

Series R-1981

MARCH 15, 1979.

1. INVITATION FOR TENDERS

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately \$2,880,000,000 of United States securities, designated Treasury Notes of March 31, 1981, Series R-1981 (CUSIP No. 912827 JN 3). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the old bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. DESCRIPTION OF SECURITIES

2.1. The securities will be dated April 2, 1979, and will bear interest from that date, payable on a semiannual basis on September 30, 1979, and each subsequent 6 months on March 31 and September 30, until the principal becomes payable. They will mature March 31, 1981, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of \$5,000, \$10,000, \$100,000, and \$1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. SALE PROCEDURES

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Wednesday, March 21, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, March 20, 1979.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is \$5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed \$1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a $\frac{1}{4}$ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price

on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. RESERVATIONS

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. PAYMENT AND DELIVERY

5.1. Settlement for allotted securities must be made or completed on or before Monday, April 2, 1979, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Thursday, March 29, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Wednesday, March 28, 1979, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the re-

requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. GENERAL PROVISIONS

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

SUPPLEMENTARY STATEMENT

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

[FR Doc. 79-8357 Filed 3-19-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 48]

ASSIGNMENT OF HEARINGS

MARCH 15, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 124679 (Sub-95F), C. R. England & Sons, now assigned for hearing on May 9, 1979 (3 days), at Salt Lake City, Utah, in a hearing room to be later designated.
MC 42011 (Sub-38F), D. Q. Wise & Co., Inc., now assigned for hearing on May 7, 1979 (1 day), at Salt Lake City, Utah, in a hearing room to be later designated.
MC 128527 (Sub-122F), May Trucking Company, now assigned for hearing on May 8,

1979 (1 day), at Salt Lake City, Utah, in a hearing room to be later designated.

MC 143059 (Sub-24F), Mercer Transportation Co., MC 119988 (Sub-159F), Great Western Trucking Co., Inc., now assigned for hearing on May 14, 1979 (5 days), at Portland, Oregon, in a hearing room to be later designated.

MC 124679 (Sub-95F), C. R. England & Sons, now assigned for continued hearing on May 21, 1979 (5 days), at Philadelphia, Pa., in a hearing room to be later designated.

MC 8964 (Sub-32F), Witte Transportation Company, now assigned for hearing on April 17, 1979, at St. Paul, Minnesota, and will be held in Court Room 584, Federal Building.

MC 117940 (Sub-281F), Nationwide Carriers, Inc., now assigned for hearing April 23, 1979, at Chicago, Illinois, and will be held in Room No. 349, 230 South Dearborn Street.

MC 133689 (Sub-215F), Overland Express, Inc., now assigned for hearing on April 25, 1979, at Chicago, Illinois, and will be held in Room No. 349, 230 South Dearborn Street.

MC 124679 (Sub-95F), C. R. England & Sons, now assigned for continued hearing on July 31, 1979 (4 days), at the Offices of the Interstate Commerce Commission, Washington, D.C.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-8328 Filed 3-19-79; 8:45 am]

[7035-01-M]

[No. MC-C-9698]

E-LETTER NOTICE CERTIFICATION PROCEDURES

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The Commission is adopting procedures for the certification of E-letter notice authority. Under the procedures, E-letter notices will be certificated only in those instances when an E-letter notice is wholly or partially transferred, or partially canceled or revoked.

EFFECTIVE DATE: To be effective March 20, 1979.

FOR FURTHER INFORMATION CONTACT:

G. Marvin Bober, 202-275-7564.

DECISION

E-LETTER NOTICE CERTIFICATION PROCEDURES

Decided: February 16, 1979.

It is ordered:

1. Based on the reasons set forth in the attached notice, the procedures for E-letter notice certification, as contained in Appendix A to the notice, are adopted.

2. Notice of this decision shall be given to the general public by depositing a copy of this decision and the

attached notice in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. for public inspection and by delivering a copy of the attached notice to the Director, Office of the Federal Register for publication in the FEDERAL REGISTER as notice to interested persons.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Commissioner Gresham not participating.

H. G. HOMME, Jr.,
Secretary.

By a notice published in the FEDERAL REGISTER on June 24, 1977 (42 FR 32342), as modified by a corrected order served June 23, 1977, the Commission proposed adopting procedures for certification of E-letter notices. (42 FR 34976, July 7, 1977.)

BACKGROUND

A gateway results from a motor common carrier combining or "tacking" two separate grants of irregular or regular route authority at a service point common to each—the gateway point—and conducting operations through the gateway between points served under one authorization and those served in the other. In *Gateway elimination*, 119 M.C.C. 530 (1974), the Commission adopted rules and regulations for tacking and the elimination of gateways created by the joinder of irregular route authorities (49 CFR Part 1065). Those regulations prohibit the tacking of irregular route authorities, with certain exceptions (notably on movements of 300 miles or less, or where the carrier's certificated authorities specifically authorize tacking or joinder) but provide means by which a carrier may seek authority to operate directly between origins and destinations formerly served by a gateway.

E-letter notice authority. Under those rules, a carrier could file a letter notice, designated as a Sub-E submission, where (1) the certificated irregular route authorities were issued to the carrier pursuant to an application proceeding pending before the Commission on or before November 23, 1973, and (2) the direct mileage between the origin and destination to be served exceeded 80 percent of the distance between those points via the gateway. See 49 CFR Part 1065(a) and (d)(1).

If movements through the gateway involved a greater degree of circuitry than 20 percent, the carrier was required to file a Sub-G (OP-OR-9) application. Similarly, if a carrier with existing irregular-route authority purchased other irregular-route authority, which could be tacked with the existing authority to create a gateway,

the acquiring carrier was required to file an application under section 207 for direct service authority. In those two instances, unlike E-letter notices, the carrier was issued a traditional certificate embracing the authority granted.

The severability of gateway elimination authority, including E-letter notices, from the underlying irregular-route authority was recognized in *Marwell Co., Petition for Declaratory Order*, 126 M.C.C. 166 (1976). Several questions have arisen since *Marwell*, particularly regarding the jurisdiction of the Commission under section 212 of the Act to suspend, change, revoke, or authorize the transfer of E-letter notice authority. In this proceeding, we will consider the certification of E-letter authority and establish procedures for certification.

DISCUSSION

A threshold matter is the *Marwell* decision itself. A number of comments contend that the issue of severability should have been decided through rule-making under section 553 of the Administrative Procedure Act (5 U.S.C. 553); others ask the Commission to reverse *Marwell* and declare gateway elimination authority not severable from the underlying irregular-route authority.

The choice between proceeding by rule-making or adjudication through individual cases lies primarily in the informed discretion of the administrative agency. *Securities & Exchange Commission v. Chenery Corporation*, 332 U.S. 194, 203 (1947). Following complex rule-making proceedings such as *Gateway Elimination*, the Commission has dealt with problems and further refinements of the general rule on a case-by-case basis as they arise. In this manner, the administrative process remains responsive and flexible. For example, the Commission's Policy Statement of December 3, 1974, clarified the application of the *Gateway Elimination* regulations to proceedings under sections 5 and 212(b).

In *Marwell*, the Commission gave explicit recognition to what was implicit in *Gateway Elimination*, that the relationship between underlying authority and direct service authority resulting from combining the underlying authority was significantly altered. Prior to *Gateway Elimination*, in proceedings involving the elimination of gateways, the Commission imposed conditions making the direct service authority nonseverable from the underlying authority. If a carrier had irregular-route authority between A and B, and between B and C, a grant of authority between A and C, eliminating the gateway of B, would include a restriction against severability from the two underlying irregular-route authorities.

the rationale lay in the then-existing state of the law: if the carrier were permitted to sell its direct service between A and C, it could continue to provide service between A and C by tacking at B. Such a transaction is objectionable as a sale and retention of duplicating authority. In many respects, gateway elimination was analogous to "alternate routes for operating convenience only."

Gateway Elimination, in general, prohibits such tacking. In the above hypothetical, if the carrier retained its underlying authority between A and B, and between B and C, and sold its gateway elimination authority between A and C, service could no longer be provided between A and C since the underlying authorities cannot be joined. Thus, the grant of direct service authority has become an independent entity.

E-letter notices were granted pursuant to a finding of public convenience and necessity on a national scale. They are equivalent to the traditional certificated authority issued on case-by-case findings. This view has been upheld by the courts. See *Clark & Reid Co., Inc. v. I.C.C.*, 565 F. 2d 733 (D.C. Cir., 1977) and *Senn Trucking Co. v. I.C.C.*, 560 F. 2d 1179 (4th Cir., 1977). Operations under E-letter notices are entitled to the same procedural safeguards under section 212(a) as those under the traditional certificates. *Eagle Motor Lines, Inc. v. I.C.C.*, 545 F. 2d 1015 (5th Cir., 1977). If an E-letter notice which did not comply with the 80-percent rule was issued, the Commission has the power to modify the authority inadvertently issued, see *American Trucking Ass'n v. Frisco Co.*, 358 R.S. 133 (1958), provided that the section 212(a) requirements are followed. *Eagle Motor Lines, Inc. v. I.C.C.*, *supra*. Initially, we proposed to issue certificates only when an E-letter notice is wholly or partially transferred, or partially cancelled or revoked. We have since considered the merits of alternate approaches to certifying E-letter notice authority which would involve the documentation of all of the E-letter notices issued. However, taking note of the fact that over 32,000 E-letter notices have been issued, we must conclude that certifying each of those notices would place an excessive burden on the Commission's existing and anticipated staff resources. As a result, the procedures originally proposed for certification of E-letter notices are adopted with a minor modification to be discussed immediately below. These procedures are set out in Appendix A.

A number of comments hold paragraph (h) of the proposed procedures to be objectionable in whole or in part. We believe that an explanation of the reasons paragraph (h) has been pro-

posed should be presented here as justification for adopting paragraph (h) with a modification.

As originally proposed paragraph (h) reads as follows:

When a carrier transfers or sells its E-letter authority and retains the authority underlying the E-letter authority, or alternatively, the carrier sells or transfers the underlying authority and retains the E-letter authority, the separate grants of underlying authority may not be tacked with each other. *Gateway Elimination, Supra*. Since the restriction against tacking is applicable in all instances, a "no-tacking" restriction will not be placed in the underlying certificate.

As noted by Tajon, Inc. in its initial verified statement, the first sentence of paragraph (h) is appropriate in order to eliminate duplications. Indeed, the first sentence simply follows the rule of *Gateway Elimination* which prohibits tacking of separate grants of irregular route authority and observing the gateway. An E-letter notice provides a carrier with the authority to provide a direct service without observing the gateway. Without an E-letter notice, a carrier is precluded both from providing a direct service and providing a service through the gateway point by tacking. When a carrier sells off only its E-letter authority, it should be placed in the same position as it would have been in had it not filed the E-letter notice in the first place—namely, the carrier should be precluded from tacking its separate grants of irregular route authority.

The arguments of Tajon, Inc., O'Boyle Tank Lines, Inc. and Movers Round Table that the second sentence of paragraph (h) is too broad are also without merit. Tajon et al. note that there exist two types of underlying authorities which may continue to be tacked—(1) authorities subject to the 300-mile exemption and (2) authorities which contain expressed joinder permission. A carrier holding either type of authority allowing tacking which also files an E-letter notice, may then operate either directly pursuant to the E-letter notice, or through the gateway point by continuing to tack, pursuant to the underlying authority. If the E-letter notice is sold to another carrier, the acquiring carrier receives the authority to provide the direct service. If the carrier retaining the underlying authority is permitted to continue tacking, it can still serve the same customers it served previous to transfer of its E-letter notice. As a result, the transfer of the E-letter notice would create essentially a duplicating service. Since the amount of circuitry involved is 20% or less, the carrier with the underlying authority would not be at a substantial competitive disadvantage with the carrier holding the pertinent E-letter authority.

ty. While *Maxwell Co., Petition for Declaratory Orders*, 126 MCC 166, authorized the severability of E-letter notices from their underlying operating authorities, it does not appear that the question of duplications arising from the situations here described was considered in that case.

It should also be noted that the imposition of a prohibition against tacking upon severing the E-letter authority would not be an improper revocation. In numerous acquisition and transfer proceedings, the Commission has conditioned its approval of the proposed transaction on one of the applicants submitting for cancellation or restriction its duplicating authority. The authority is not revoked, as the applicants are only required to excise the duplicating authority should they choose to consummate the transaction. By the same token, a carrier severing its E-letter authority from its underlying authority which it would otherwise tack pursuant to either the 300-mile exemption or an express joinder permission, is not having its tacking authority revoked. Instead, it is accepting the no-tacking restriction as a condition to the Commission approving the severance of the E-letter authority to preclude a duplication of service.

Nevertheless, a modification of paragraph (h) is necessary to satisfy a concern raised by Tajon, Inc. regarding the second sentence of paragraph (h). Tajon observes that a certificate may include multiple grants of irregular route authority. Certain of those grants may not underlie an E-letter authority, while other grants do underlie E-letter authority. Furthermore, those grants not underlying the E-letter authority may still be tackable under the 300-mile exemption with other grants in the certificate and other certificates of the carrier. Tajon indicates that the second sentence implies that the restriction against tacking would apply to all of the grants of authority contained in the certificate. The second sentence should be deleted and paragraph (h) clarified to read:

(h) When a carrier transfers or sells its E-letter authority and retains the authority underlying the E-letter authority, or alternatively, the carrier sells or transfers the underlying authority and retains the E-letter authority, the separate grants of authority may not be tacked to the extent that such tacking would permit service between points in the E-letter authority. Re-issued certificates embracing the underlying authorities will contain restrictions against service within the scope of the involved E-letter authority. These restrictions will not affect other tacking operations involving the same certificates and still permitted under the gateway elimination regulations at 49 CFR 1065.

This clarification should be sufficient to indicate that the blanket re-

striction against tacking does not apply to authorities not underlying the E-letter notice regardless of whether they are contained in the same certificate as authorities that do underlie the E-letter notice.

In those instances where E-letter notices are to be certified, carriers are encouraged to prepare the draft certificates. Upon request, the Commission will provide instructions for drafting the certificates. Sample certificate cover pages will also be provided. The Commission will assign appropriate subnumbers to each certificate prior to issuance. Those instructions and a sample draft certificate are set out in Appendix B.

FINDINGS

We find that the procedures adopted in this proceeding are reasonable and necessary to the effective enforcement and administration of Part II of the Interstate Commerce Act. We also find that this decision does not significantly affect the quality of the human environment.

These procedures are promulgated under the authority contained in section 552, 553, and 559 of the Administrative Procedure Act (5 U.S.C. 552, 553, 559) and section 11343, 10922, 10926, and 11343 (49 U.S.C. 11343, 10926, 11343; former sections 49 U.S.C. 5, 207, and 312).

APPENDIX A—PROCEDURES FOR E-LETTER NOTICE CERTIFICATION

(a) Where a carrier transfers or sells a portion, or portions, of the operating authority contained in an E-letter notice, to one or more certificated carriers, and a portion of the operating authority contained in the E-letter notice is retained by the vendor carrier, the vendor and vendee (or vendees) will each receive a certificate covering the pertinent portion of the authority in the E-letter notice authorized to be conveyed or retained.

(b) Where two or more portions of authority contained in an E-letter notice are sold or transferred respectively, to two or more certificated carriers and no authority in the E-letter notice is retained by the vendor, or where the entire authority contained in an E-letter notice is transferred or sold to one certificated carrier, the vendee in the latter situation, or vendees in the former situation, would each receive a certificate covering the pertinent E-letter authority authorized to be acquired.

(c) When a non-carrier acquires all, or a portion, of the authority in an E-letter notice, it will receive a certificate covering the E-letter authority acquired. The vendor, if it retains any portions of the authority in the E-letter will receive a certificate covering the pertinent portions of the E authority to be retained.

(d) When a carrier transfers or sells all of its operating authority, except for the entire authority contained in one or more E-letter notices, it will not receive a certificate covering the E-letter authority retained. If only portions of the authority contained in one or more E-letter notices is retained by

the vendor, the vendor will receive certificates covering that retained authority. The foregoing is equally applicable to instances in which a carrier retains exclusively E-letter authority following a cancellation or revocation of its other authority.

(e) A carrier receiving a certificate, pursuant to paragraphs (a) and (b) above, will be assigned the next sequential sub-number under its lead docket.

(f) A carrier retaining the entire authority in an E-letter notice as described in paragraph (c) above will retain its lead docket number, but all of its existing sub-numbers will be cancelled, and the authority contained in the retained E-letter authority will be assigned the next sequential sub-number with the standard notation in the Commission's records that this sub-number is comprised of E-letter authority. This will avoid leaving the carrier without an ICC record.

(g) An applicant under sections 5(2) and 212(b) of the Act, seeking to purchase or transfer authority should state in its application whether any E-letter notice authority of the vendor is to be acquired by the vendee and that to be retained by the vendor. Unless the application so provides, the Commission will presume that the vendor will retain its E-letter authority.

(h) When a carrier transfers or sells its E-letter authority, and retains the authority underlying the E-letter authority, or alternatively, the carrier sells or transfers the underlying authority and retains the E-letter authority, the separate grants of authority may not be tacked to the extent that such tacking would permit service between points in the E-letter authority. Re-issued certificates embracing the underlying authorities will contain restrictions against service within the scope of the involved E-letter authority. These restrictions will not affect other tacking operations involving the same certificates and still permitted under the gateway elimination regulations at 49 CFR Part 1065.

APPENDIX B—GUIDELINES FOR PREPARATION OF A CERTIFICATE EMBRACING E-LETTER NOTICE AUTHORITY

FORMS

The attached document form will be used.

FORMAT OF DESCRIPTION OF AUTHORITY

- (1) Single space.
- (2) No indentation.
- (3) Skip one space between paragraphs.
- (4) Underline the commodity and type of carriage.
- (5) Tie restrictions to the authority by numbering.
- (6) Correction tape may be used.
- (7) A line may be typed to within ¼ inch of the margin.

STANDARD PROVISIONS

Provisions regarding (1) duplicating authority, (2) tacking, and (3) dual operations appear on the standard form document. Exceptions to these must be made clear.

HEADING OF DESCRIPTION OF AUTHORITY

The transportation service to be performed by the carrier in interstate or foreign commerce shall be as specified below.

SAMPLE DESCRIPTION OF AUTHORITY

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce,

over irregular routes, transporting, (1) *clay and clay products* (except clay in bulk), (a) between Omaha, NE, on the one hand, and, on the other, points in Alabama, Florida, and Georgia, and (b) from New York, NY, to St. Louis, MO, restricted in (b) to the transportation of traffic originating at and destined to the named points; and (2) *petroleum products*, from Los Angeles, CA, and Seattle, WA, to points in Sundown and Daylight Counties, NM.

For assistance, contact the Certificate and Captions Unit, Room 2372, phone number 202-275-7251. The draft certificate should also be addressed to the Certificate and Captions Unit.

INTERSTATE COMMERCE COMMISSION, CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

This Certificate of Public Convenience and Necessity is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

The carrier, as an underlying condition of this authority, shall render reasonably continuous and adequate service to the public. Failure to do so will constitute sufficient grounds for the suspension, change, or revocation of this authority.

For all carriers: Any duplication in this authority and rights currently held does not confer more than one operating right.

For common carriers with irregular route authority: Any irregular route authority authorized in this certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

For carriers with both common and contract authority: The Commission reserves the right to impose such terms, conditions, or limitations in the future as it may find necessary to assure conformance with section 10930 of the Interstate Commerce Act.

The transportation service to be performed is described on the reverse side of this document.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-8351 Filed 3-19-79; 8:45 am]

[7035-01-M]

FOURTH SECTION APPLICATIONS FOR RELIEF

MARCH 15, 1978.

These applications for long-and-short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. on or before April 4, 1979.

FSA No. 43671, Southwestern Freight Bureau, Agent No. B-805, plasticizers or solvents in tank carloads from Taft, La. to Cincinnati, Ohio, in supp. 48 to its Tariff ICC SWFB 3038-E, to become effective April 13, 1979. Grounds for relief-rate relationship.

FSA No. 43672, Western Trunk Line Committee, Agent's No. A-2757, rates on fresh, frozen foods, in carloads, from Laramie, Wyo., to stations in

Western Trunk Line Territory, in Supplement 8 to its Tariff ICC WTL 3200-G, to become effective April 7, 1979. Grounds for relief-market competition, modified short-line distance formula and grouping.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-8329 Filed 3-19-79; 8:45 am]

[7035-01-M]

[Ex Parte No. MC-64 (Sub-No. 2)]

SPECIAL TEMPORARY AUTHORITY PROCEDURES

Proposed Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposal to issue a decision setting out special temporary authority procedures.

SUMMARY: The Commission proposes to issue a decision containing general findings which will remain in force indefinitely and will identify those factual situations where a need for motor transportation service has consistently and recurrently been found under 49 U.S.C. 10928 (formerly section 210a(a) of the Interstate Commerce Act). Where an application for temporary authority qualifies under one of these specific factual circumstances, the decision will provide that the application will be granted for the period of need as determined by the field staff, not to exceed 180 days. This action is being taken so that the Commission may handle temporary authority applications in a more efficient and timely manner.

DATES: Written comments should be filed with the Commission on or before April 19, 1979.

ADDRESSES: Send comments to: Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Bruce M. Kasson, (202) 275-7723.

SUPPLEMENTARY INFORMATION: Since enactment of the Transportation Act of 1940, which gave the Commission the power to grant motor carrier temporary authority, the Commission has issued 16 "General Temporary Orders." The orders described specific emergency situations in which there was little doubt that there was or would be an immediate need for transportation service. The orders provided for the grant of motor carrier tempo-

ratory authority applications without hearing or other proceedings upon a showing by the applicant of a need under the factual situation set forth in the order. The purpose of these general temporary orders was to ensure that emergency needs were met on an expedited basis by the field staff.

The Commission now receives over 14,000 emergency temporary authority applications per year. This represents a 300-percent increase over a 4-year span since 1975. Many of these emergency applications cover factual situations originally envisioned in the legislative history to be worthy of summary grant procedures (natural disasters). Others deal with periodic though recurring situations (labor unrest; sudden discontinuances of existing service). All of these situations have traditionally received affirmative action due to their emergency nature.

Instead of another general temporary order which is not permanent, the Commission proposes to issue a decision setting out special procedures to simplify and expedite processing of temporary authority applications filed as a result of special situations under which such applications have been traditionally and consistently granted. This action is being taken in order to be more responsive to the public need by handling these applications in a more efficient and timely manner.

We have identified a number of those emergency situations where we have in the past consistently found a need for "emergency" temporary authority. Because of the recurring nature of these situations, we believe that it is unnecessary to require that a specific finding of need be made in each instance at the Washington headquarters. Accordingly, we intend to establish new procedures for granting certain "emergency" temporary authority applications.

We propose the following action. The Commission will issue a decision setting out special temporary authority procedures which can be used in certain "emergency" situations. The decision will include a general finding that an immediate need exists for motor carrier service under the "emergency" situations enumerated below. An applicant seeking temporary authority for motor transportation falling under any of these situations shall contact the I.C.C. field office having jurisdiction over the applicant's domicile. This contact may be made in person, in writing, or by telephone. If the I.C.C. field official determines that an applicant qualifies under one of the emergency factual situations set out below, the field representative may authorize the commencement of transportation services without further proceedings or consultations. The grant of temporary authority under

such "emergency" situations would be effective for the period determined by the field official to be necessary to satisfy the particular immediate need, but would not exceed 180 days.

The "emergency" situations in which the Commission has consistently found a need for temporary authority are identified as follows:

(1) Natural disasters, such as floods, storms, forest fires, earthquakes, or other unpredictable occurrences which affect the public health, safety, and welfare;

(2) Major catastrophes, such as explosions, fires, or oil spills;

(3) Disruption of carrier service due to adverse weather conditions;

(4) Perishable commodities in imminent danger of spoilage due to failure of storage facilities or breakdown of existing distribution system;

(5) Discontinuance of services of existing carriers due to labor shortages or work stoppages; and

(6) Transportation services required in the interest of the national defense.

The grant of temporary authority would be conditioned upon compliance with applicable requirements for grants of temporary authority concerning tariff publications, evidence of security for the protection of the public, and designation of agents for service of process.

Other temporary authority applications would be handled under procedures presently in effect. But, service performed under temporary authority granted under these special procedures would in no way constitute evidence or a showing warranting future

issuance of a certificate of public convenience and necessity or permit, as provided in 49 U.S.C. § 10922 (formerly section 207(a) of the Interstate Commerce Act) and 49 U.S.C. § 10923 (formerly section 209(b) of the Interstate Commerce Act).

PUBLIC INVITED TO COMMENT

The public is invited to comment on the approach taken, the specific situations identified, and other situations which might be included. (An original and 15 copies, if possible, should be submitted.)

This notice is issued under authority contained in 49 U.S.C. 10321(a) and 10928.

Dated: March 8, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp, and Christian. Commissioner Stafford dissenting.

H. GORDON HOMME, Jr.,
Secretary.

Commissioner Stafford, dissenting:

My principal objection to the proposed notice is the extreme breadth of discretion that would be delegated to field personnel. Specifically, with the possible exception of labor strife, I cannot envision any of the listed conditions lasting 180 days. The need for such a long "emergency" period is simply nonexistent. Similarly, the territorial scope of our "emergency" grant is unlimited. Conceivably a carrier could obtain nationwide authority for 180 days.

I am also concerned over the question of appealing a decision made in the field. While not so stated specifically in the prepared notice, it appears that the field decisions will be called administrative rather than judicial in nature. Appeals of administrative decisions normally are not permitted. Until the right of appeal is clarified, I

cannot support such a massive delegation of authority.

Finally, it is unclear who in the field will possess the decision making authority. The term "field representative" does not tell me whether this person would be a District supervisor, transportation specialist or clerk-typist.

[FR Doc. 79-8298 Filed 3-19-79; 8:45 am]

[7035-01-M]

[AB 1 (SDM)]

CHICAGO & NORTH WESTERN
TRANSPORTATION CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, § 1121.23, that the Chicago and North Western Transportation Company, has filed with the Commission its color-coded system diagram map in docket No. AB 1 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on January 31, 1979, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the office of the Commission, Section of Dockets by requesting docket No. AB 1 (SDM).

H. G. HOMME, Jr.,
Secretary.

[7035-01-C]

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

AB-1 SYSTEM DIAGRAM MAP

49-CFR SEC. 1121.20

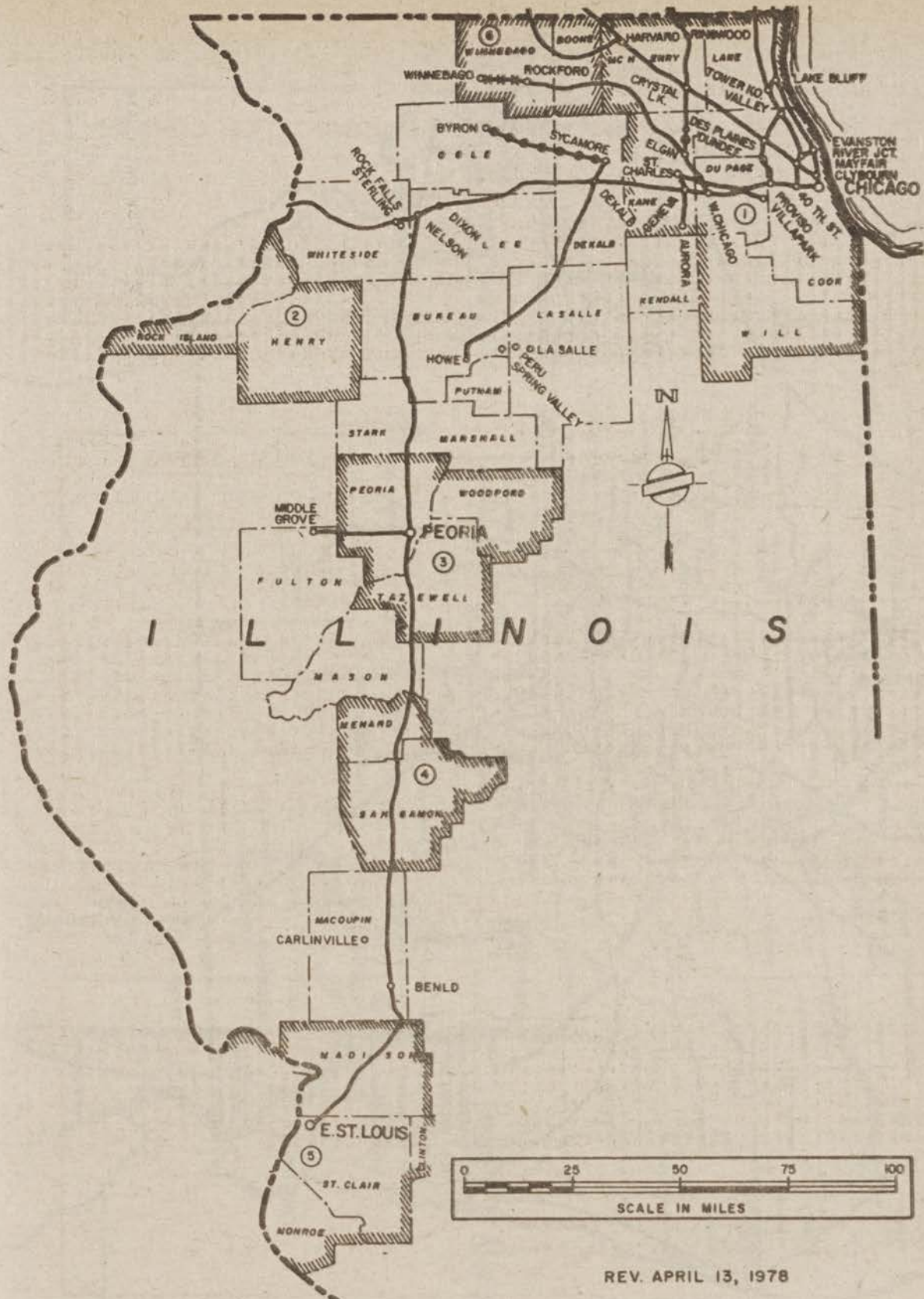
DATE: DEC. 1, 1978

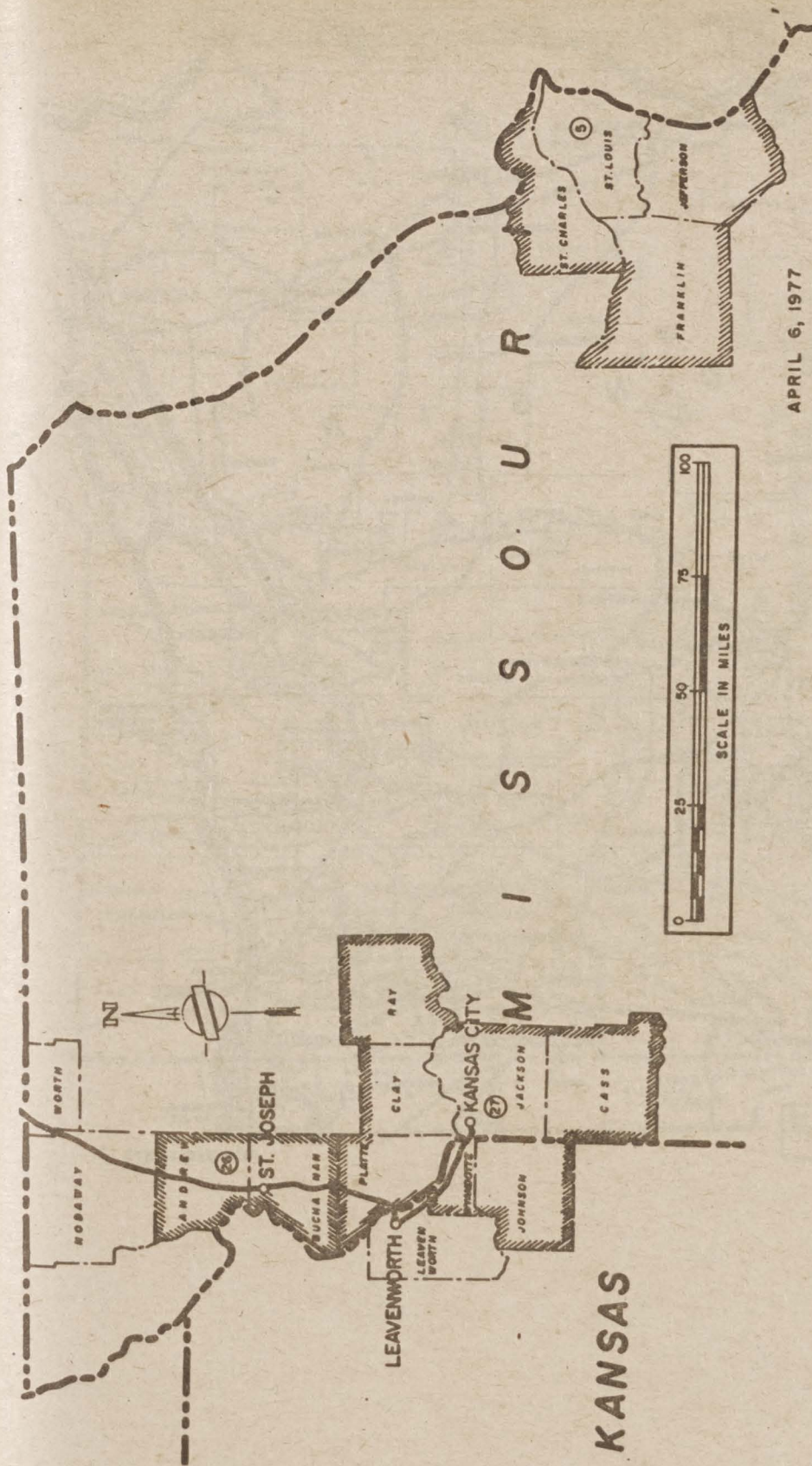
STANDARD METROPOLITAN STATISTICAL AREAS

- | | |
|-------------------------|------------------------|
| ① CHICAGO | ⑮ DULUTH-SUPERIOR |
| ② DAVENPORT-ROCK ISLAND | ⑯ MINNEAPOLIS-ST. PAUL |
| ③ PEORIA | ⑰ ROCHESTER |
| ④ SPRINGFIELD | ⑱ SIOUX FALLS |
| ⑤ ST. LOUIS | ⑲ DUBUQUE |
| ⑥ ROCKFORD | ⑳ WATERLOO-CEDAR FALLS |
| ⑦ KENOSHA | ㉑ CEDAR RAPIDS |
| ⑧ RACINE | ㉒ SIOUX CITY |
| ⑨ MILWAUKEE | ㉓ LINCOLN |
| ⑩ MADISON | ㉔ OMAHA |
| ⑪ LA CROSSE | ㉕ DES MOINES |
| ⑫ GREEN BAY | ㉖ ST. JOSEPH |
| ⑬ APPLETON | ㉗ KANSAS CITY |
| ⑭ EAU CLAIRE | |

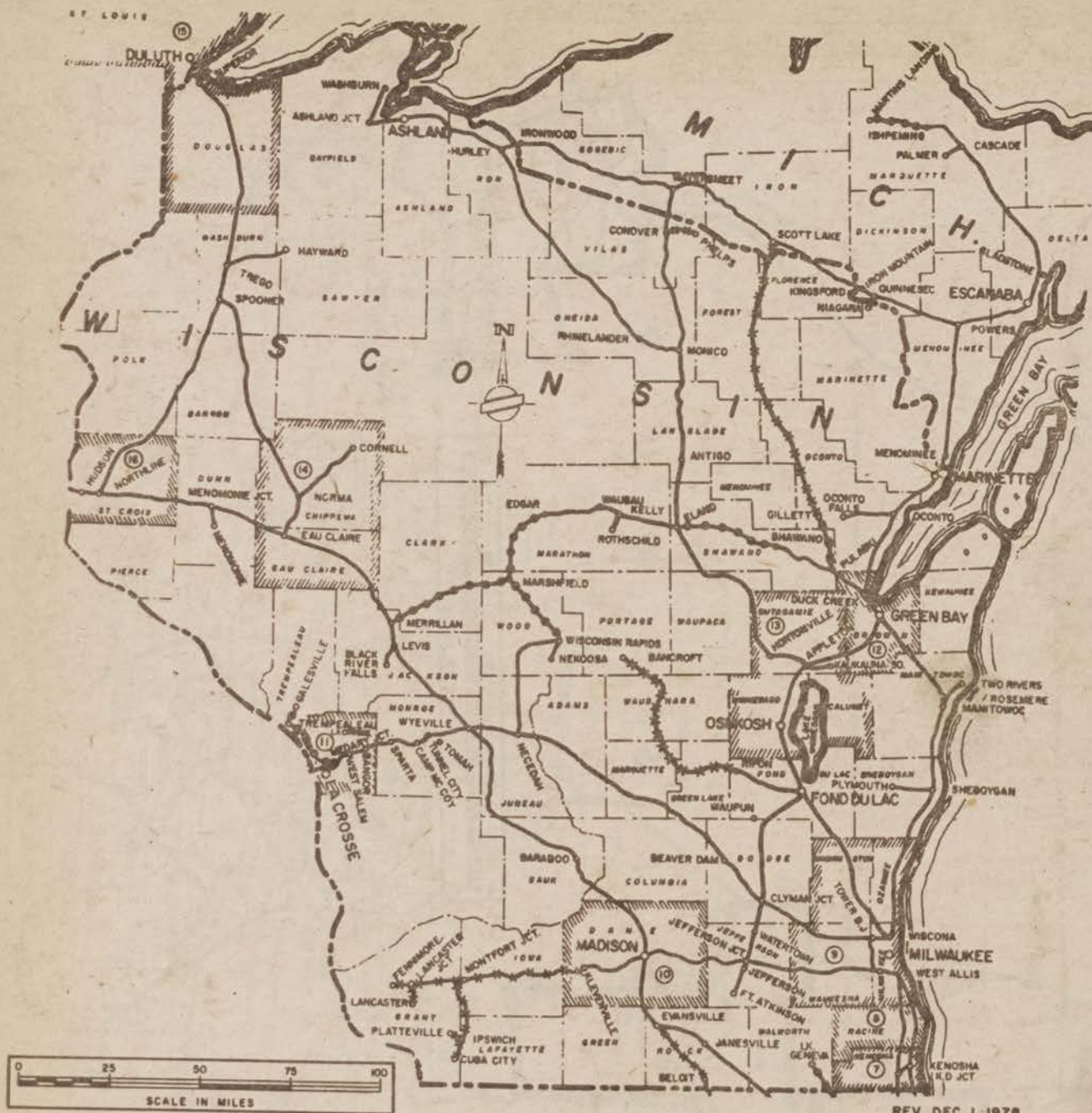
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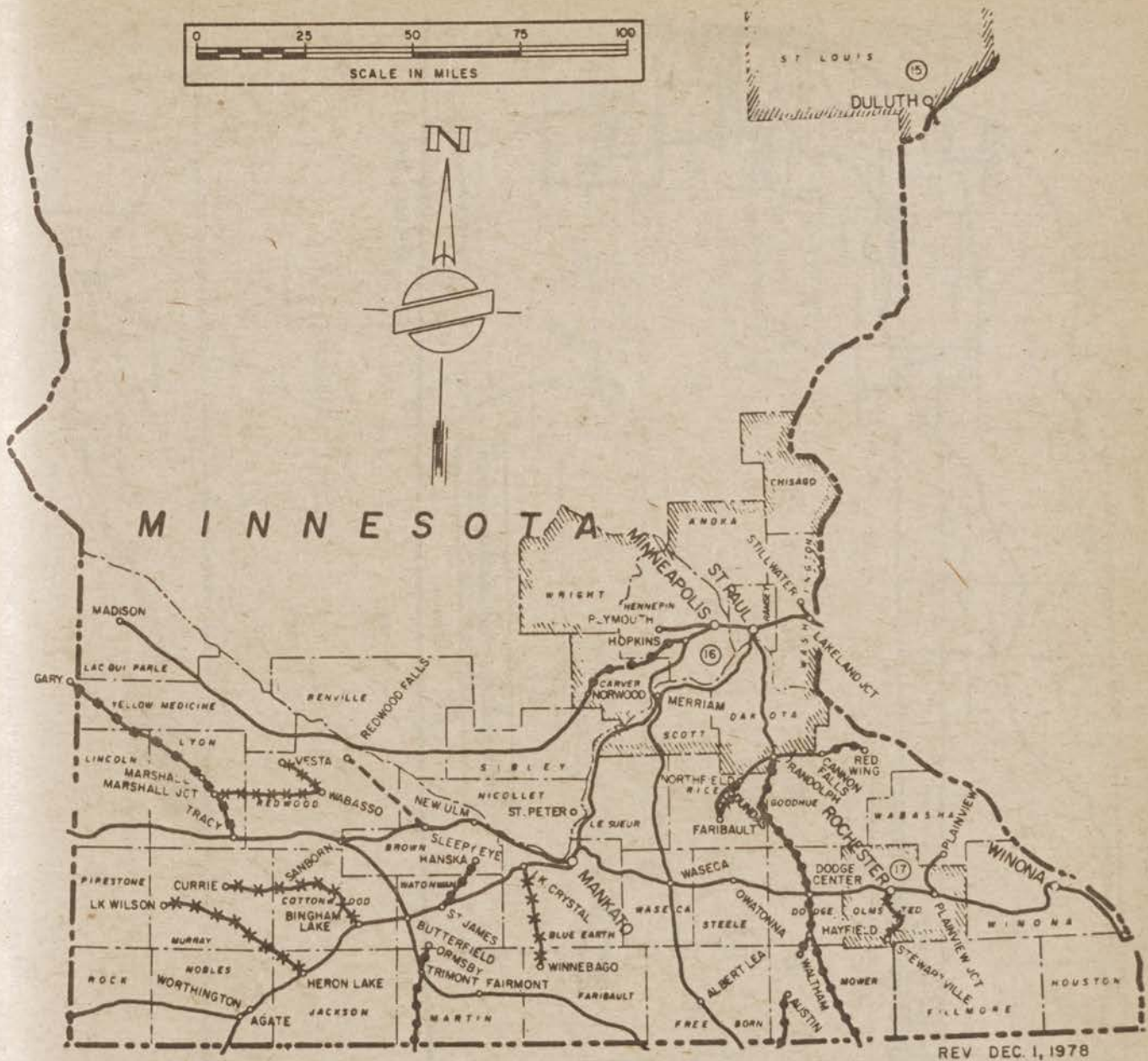
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|--------|---|---|
| RED |  | CATEGORY 1. ANTICIPATED SUBJECT OF ABANDONMENT APPLICATION WITHIN 3 YEARS. 49 CFR SEC. 1121.20 (b)(1) |
| GREEN |  | CATEGORY 2. POTENTIALLY SUBJECT TO ABANDONMENT. 49 CFR SEC. 1121.20 (b)(2) |
| YELLOW |  | CATEGORY 3. APPLICATION PRESENTLY PENDING BEFORE COMMISSION. 49 CFR SEC. 1121.20 (b)(3) |
| BROWN |  | CATEGORY 4. OPERATED UNDER SUBSIDY 49 USC SEC. 10 (6)(a) 49 CFR SEC. 1121.20 (b)(4) |
| BLACK |  | CATEGORY 5. OTHER LINES OWNED OPERATED. 49 CFR SEC. 1121.20 (b)(5) |
| BLACK |  | STATE BOUNDARY LINES |
| BLACK |  | COUNTY BOUNDARY LINES |
| BLACK |  | SMSA BOUNDARY LINES |

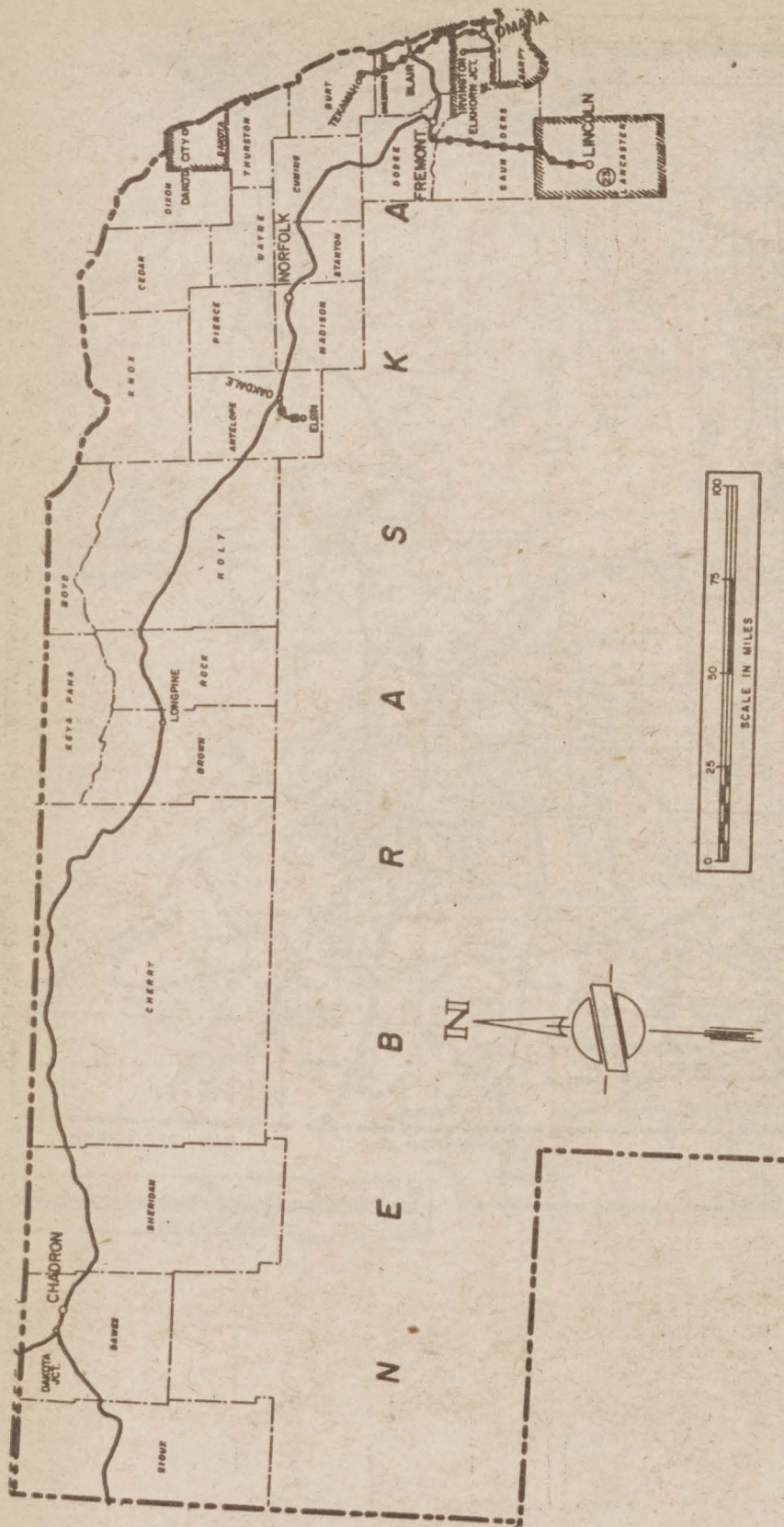




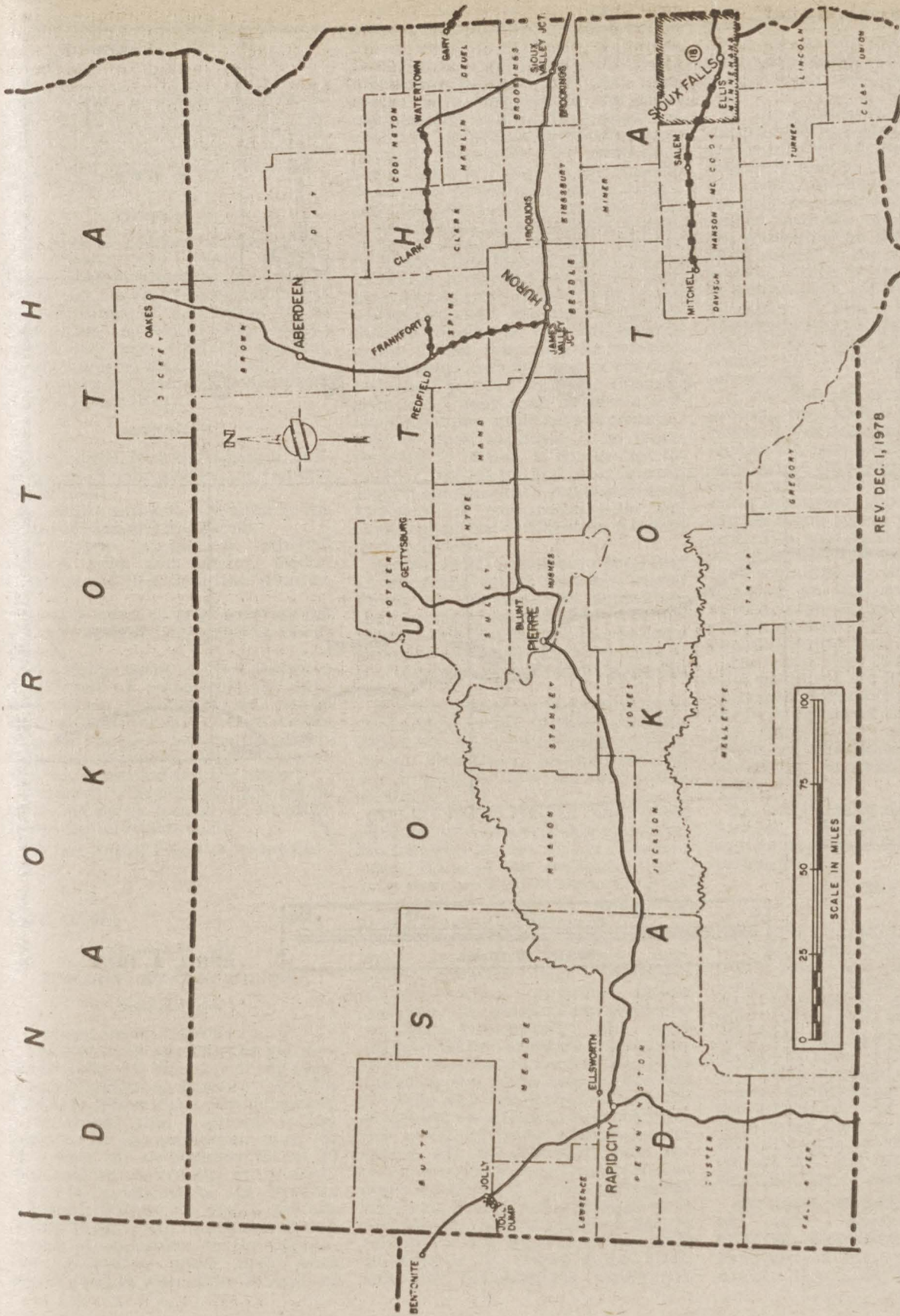
NOTICES



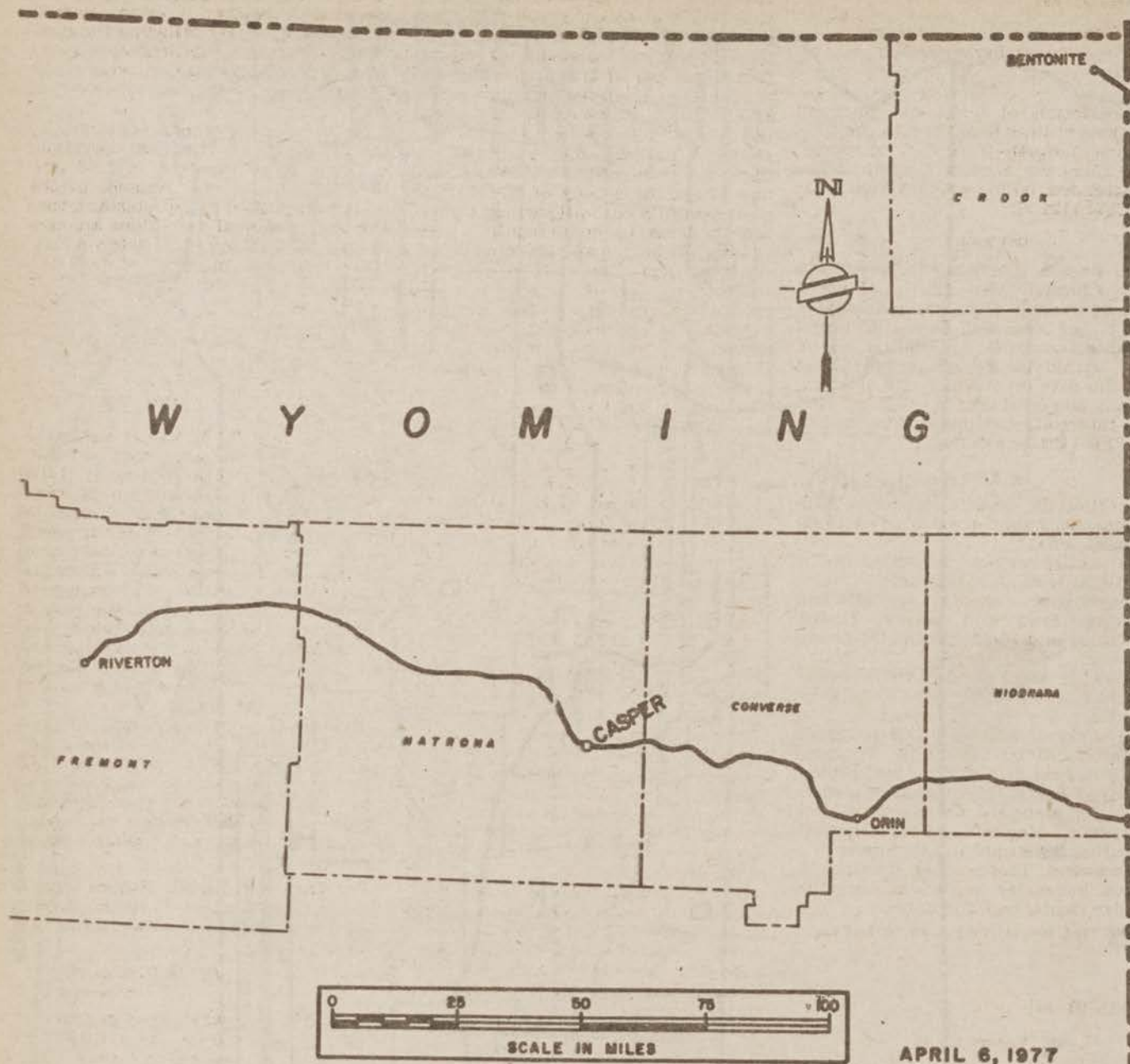




REV. DEC. 1, 1978



REV. DEC. 1, 1978



[7035-01-M]

CHICAGO & NORTH WESTERN
TRANSPORTATION CO.

AB-1

Description of additional lines or portions of lines identified on the Chicago and North Western Transportation Company System Diagram Map, as amended, falling within Category 1. 49 CFR 1121.21.

CATEGORY 1

All lines or portions of lines which the Chicago and North Western Transportation Company anticipates will be the subject of an abandonment or discontinuance application to be filed within the 3-year period following the date upon which the diagram, or any amended diagram, is filed with the Interstate Commerce Commission. 49 CFR 1121.20(b)(1).

MINNESOTA

(a) Riceville, Iowa to Randolph, Minnesota (85.2 mile portion of Oelwein Subdivision).

(b) Entire segment is located in the States of Iowa and Minnesota.

(c) Entire segment in Mitchell County, Iowa and Mower, Dodge, Goodhue and Rice Counties, Minnesota.

(d) M.P. 409.9 to M.P. 496.9 excluding M.P. 457.2 to M.P. 459.0 at Dodge Center.

(e) Central agent at New Hampton (unaffected) is responsible for associate station of McIntire, and central agent at Austin (unaffected) is responsible for associate stations of Elkton, Sargeant, Hayfield, West Concord, Kenyon, Nerstrand and Dennison.

Comment: This proposal does not include industries located at Riceville, Dodge Center or Randolph.

[FR Doc. 79-8241 Filed 3-19-79; 8:45 am]

[7035-01-M]

[Volume No. 19]

PERMANENT AUTHORITY DECISIONS

Decision-Notice

Decided: March 7, 1979.

The following applications are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the *FEDERAL REGISTER*. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of

the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of § 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We Find: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones. (Board Member Jones not participating.)

H. G. HOMME, Jr.,
Secretary.

MC 8771 (Sub-45F), filed January 4, 1979. Applicant: SAW MILL SUPPLY, INC., 1018 Saw Mill River Rd., Yonders, NY 10710. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting structural steel, and structural steel encased in concrete, from Conklin and Gouverneur, NY, to points in the United States (except AK and HI). (Hearing site: Nashville, TN, or Atlanta, GA.)

MC 10875 (Sub-49F), filed January 29, 1979. Applicant: BRANCH MOTOR EXPRESS COMPANY, a Pennsylvania corporation, 114 Fifth Avenue, New York, NY 10011. Repre-

sentative: G. G. Heller (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of GTE Sylvania Division, at Smithfield, NC, as an off-route point in connection with applicant's otherwise authorized regular-route operations. (Hearing site: New York, NY, or Washington, DC.)

MC 22509 (Sub-14F), filed January 5, 1979. Applicant: MISSOURI-NEBRASKA EXPRESS INC., a Iowa corporation, 5310 St. Joseph Ave., St. Joseph MO 64505. Representative: Harry Ross, 58 S. Main St., Winchester, KY 40391. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *metal containers*, from LaPorte, IN, to points in IA. (Hearing site: Chicago, IL.)

MC 29537 (Sub-8F), filed January 18, 1978. Applicant: R. H. CRAWFORD, INC., 425 Poplar St., Hanover, PA 17331. Representative: John M. Musselman, P.O. Box 1146, 410 North Third St., Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery and food business houses (except frozen food, and commodities in bulk), between the facilities of California Canners and Growers, in Adams and York Counties, PA, on the one hand, and, on the other, points in GA, KY, ME, NC, NH, PA, SC, TN, VT, and WV, restricted to the transportation of traffic originating at the named origins or destined to the indicated destination. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 29568 (Sub-7F), filed January 15, 1979. Applicant: ASSOCIATED TRANSFER & STORAGE COMPANY, INC., 730 North Northlake Way, Seattle, WA 98103. Representative: Susan W. Carlson, 1215 Norton Bldg., Seattle, WA 98104. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular route, transporting (1) *chemicals* (except in bulk, in tank vehicles), and (2) *commodities* which are otherwise exempt from economic regulation under 49 U.S.C. §10526(a)(6) formerly Section 203(b)(6) of the Interstate Commerce Act, when moving in mixed loads with the commodities in (1) above, between points in WA, CA, OR, ID, MT, and NV. (Hearing site: Seattle, WA.)

MC 35807 (Sub-90F), filed December 18, 1978. Applicant: WELLS FARGO ARMORED SERVICE CORPORATION, P.O. Box 4313, Atlanta, GA 30302. Representative: Steven J. Thatcher (same address as applicant). To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *coin, currency, securities, and food stamps*. (1) between Baltimore, MD, on the one hand, and, on the other, points in WV and DC, and (2) between Richmond, VA, on the one hand, and, on the other, Baltimore, MD, Charlotte, NC, and Washington, DC, under contract(s) in (1) and (2) above with banks and banking institutions. (Hearing site: Richmond, VA, or Washington, D.C.)

MC 41406 (Sub-105F), filed December 27, 1978. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., P.O. Box 2176, Hammond, IN 46323. Representative: Wade H. Bourdon (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel railroad car and locomotive engine wheels*, from Keokuk, IA, to points in IL, IN, KY, ME, MD, MI, MO, NY, OH, PA, TN, VA, and WV. (Hearing site: Chicago, IL.)

MC 1406 (Sub-106F), filed December 27, 1978. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., P.O. Box 2176, Hammond, IN 46323. Representative: Wade H. Bourdon (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *automobile transmissions, automobile transmission parts, metal containers, metal racks*, (2) *such commodities* as are used in the manufacture and distribution of the commodities in (1) above, and (3) *iron and steel scrap* between Batavia Township, OH, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Cincinnati, OH.)

MC 41915 (Sub-44F), filed January 2, 1979. Applicant: MILLER'S MOTOR FREIGHT, INC., 1060 Zinn's Quarry Road, York, PA 17405. Representative: Jeremy Kahn, Suite 733 Investment Building, 1511 K Street, N.W., Washington, D.C. 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *petroleum, petroleum products, vehicle body sealer, and sound deadener compounds*, (except commodities in bulk, in tank vehicles), and *filters*, from points in Warren County, MS, to points in AL, CT, DE, FL, GA, KY, LA, MD, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VA, WV, and DC, and (2)(a)

petroleum, petroleum products, vehicle body sealer, and sound deadener compounds, and filters, and (b) materials, equipment, and supplies used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk, in tank vehicles), from points in AL, GA, KY, NY, OH, PA, RI, SC, VA, and WV, to points in Warren County, MS, restricted in parts (1) and (2) above to the transportation of traffic originating at or destined to the facilities of Quaker State Oil Refining Corporation, in Warren County, MS. (Hearing site: Washington, D.C.)

MC 41951 (Sub-35F), filed December 27, 1978. Applicant: WHEATLEY TRUCKING, INC., P.O. Box 458, Cambridge, MD 21613. Representative: Daniel B. Johnson, 4304 East-West Hwy., Washington, DC 20014. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, (1) from Cheriton, VA, to points in CT, DE, FL, GA, IL, IN, KY, MA, MD, MI, NC, NJ, NY, OH, PA, RI, SC, TN, VA, WV, and DC, and (2) from Queen Anne, MD, to points in DE, FL, GA, IL, IN, KY, MD, MI, NC, OH, SC, TAN, VA, WV, and DC. (Hearing site: Washington, DC, or Cambridge, MD.)

MC 47583 (Sub-77F), filed November 14, 1978. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Representative: W. Randall Tye, 1400 Conder Building, Atlanta, GA 30303. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk, in tank vehicles), between points in AZ, AR, CO, IL, IA, KS, LA, MO, NE, NM, ND, OK, SD, TX, and WY, restricted to the transportation of traffic originating at or destined to the facilities of Owens-Corning Fiberglass Corporation. (Hearing site: Washington, DC.)

MC 51018 (Sub-11F), filed January 29, 1979. Applicant: THE BESL TRANSFER CO., an Ohio Corporation, 5550 Este Avenue, Cincinnati, OH 45232. Representative: A. Charles Tell, 100 East Broad Street, Cincinnati, OH 45223. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *commodities* the transportation of which because of size or weight requires the use of special equipment, between points in Butler, Clermont, Hamilton, Montgomery, and Warren Counties, OH, and those points in Kentucky within the Cincinnati, OH, commercial zone.

on the one hand, and, on the other, points in AL, AR, GA, LA, MS, NC, OK, SC, and TN. (Hearing site: Cincinnati, OH.)

MC 51018 (Sub-12F), filed January 29, 1979. Applicant: THE BESL TRANSFER CO., an Ohio corporation, 5550 Este Avenue, Cincinnati, OH 45232.

Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *sewage treatment plants and lift stations*, and (2) *parts and accessories* for the commodities in (1) above, from the facilities of Clow Corporation, at or near Richwood, KY, to points in the United States (except AK and HI). (Hearing site: Louisville, KY.)

MC 51146 (Sub-669F), filed December 27, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil A. DuJardin (same address as applicant). To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *gift packages*, and (2) *materials and supplies* used in the manufacture of cheese, cheese products, sausage, bakery products, and gift packages, between points in the United States (except AK and HI), restricted to shipments originating at or destined to the facilities of Swiss Colony, Inc. (Hearing site: Chicago, IL.)

MC 53841 (Sub-19F), filed January 2, 1979. Applicant: W. H. CHRISTIE & SONS, INC., Box 517, East State St., Knox, PA 16232. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *plastic pipe and fittings*, (2) *accessories* used in the installation of the commodities named in (1) above, and (3) *materials* used in the manufacture of the commodities named in (1) and (2) above, (except commodities in bulk), between Franklin, PA, on the one hand, and, on the other, points in CT, DE, IL, IN, IA, KY, ME, MD, MA, MI, NH, NJ, NY, NC, OH, RI, TN, VA, VT, WV, WI, and DC. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 55709 (Sub-9F), filed January 30, 1979. Applicant: ANDING TRANSIT, INC., P.O. Box 112, Arena, WI 53503. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *yogurt*, and (2) *materials, equipment*

and supplies used in the manufacture of yogurt, (a) from the facilities of Elm Grove Dairy, Inc., at Richland Center, WI, to the facilities of Jewel Companies, Inc., at Melrose Park, IL, and (b) from those points in IL north of Interstate Hwy 80, to Richland Center, WI. (Hearing site: Madison, WI, or Chicago, IL.)

MC 63838 (Sub-9F), filed January 19, 1979. Applicant: BOLUS MOTOR LINES, INC., 700 North Keyser Avenue, Scranton, PA 18508. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *magazines and periodicals*, from Scranton, PA, to Absecon and Trenton, NJ. (Hearing site: Washington, DC.)

MC 73688 (Sub-82F), filed January 19, 1979. Applicant: SOUTHERN TRUCKING CORPORATION, 1500 Orenda Avenue, P.O. Box 7195, Memphis, TN 38107. Representative: Bob McAdams, Route 6, Box 15, North Little Rock, AR 72118. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities as are dealt in by manufacturers and distributors of tile* (except commodities in bulk and those which because of size or weight require the use of special equipment), (1) between Jackson, TN, on the one hand, and, on the other, points in CT, DE, FL, GA, IN, KY, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, SC, VA, VT, WV, and DC, (2) between Olean, NY, and Lansdale and Quakertown, PA, on the one hand, and, on the other, points in CT, DE, ME, MD, MA, NH, NJ, NY, NC, PA, RI, TX, VA, VT, WV, and DC, and (3) between Lewisport and Cloverport, KY, on the one hand, and, on the other, those points in the United States in and east of MI, IN, KY, TN, and AL. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 78118 (Sub-40F), filed January 19, 1979. Applicant: W. H. JOHNS, INC., a Delaware corporation, 35 Witmer Road, Lancaster, PA 17602. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *aluminum doors, aluminum windows, aluminum screens, and aluminum sash*, and (2) *accessories and parts* used in the installation of the commodities in (1) above, (a) from the facilities of Season-All Industries, Inc., at Indiana, PA, to points in IN, and (b) from the facilities of Season-All Industries, Inc., at Yatesboro, PA, to points in IN, MI,

and OH, restricted in (a) and (b) above to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Washington, DC, or Harrisburg, PA.)

MC 78228 (Sub-104F), filed January 29, 1979. Applicant: J. MILLER EXPRESS, INC., an Ohio corporation, 962 Greentree Road, Pittsburgh, PA 15219. Representative: Henry M. Wick, 2310 Grant Bldg., Pittsburgh, PA 15219. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, between the facilities of Charles E. Kline Company, Inc., at Warren, OH, on the one hand, and, on the other, points in IL, IN, MI, and KY. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 82841 (Sub-246F), filed January 8, 1979. Applicant: HUNT TRANSPORTATION, INC., 10770 I St., Omaha, NE 68127. Representative: Donald L. Stern, 610 Xerox Bldg., 717 Mercy Rd., Omaha, NE 68106. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *thermal storage materials, and thermal storage supplies*, from Killeen, TX, to points in the United States (except AK and HI). (Hearing site: Omaha, NE.)

MC 83217 (Sub-78F), filed December 18, 1978. Applicant: DAKOTA EXPRESS, INC., a South Dakota corporation, 550 E. 5th St. South, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Iowa Beef Processors, Inc., at or near Dakota City, NE, and Sioux City, IA, to points in CT, DE, MA, MD, ME, MI, NH, NJ, NY, OH, PA, RI, VA, VT, WV, and DC, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: St. Paul, MN, or Omaha, NE.)

MC 83835 (Sub-156F), filed January 22, 1979. Applicant: WALES TRANSPORTATION, INC., P.O. Box 6186, Dallas, TX 75222. Representative: James W. Hightower, 136 Wynnewood Professional Building, Dallas, TX 75224. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel*

tubing, between points in AL, AR, CA, CO, LA, NC, OK, OR, TX, and WA, on the one hand, and, on the other, points in the United States (including AK but excluding HI), restricted to the transportation of traffic originating at or destined to the facilities of Kilsby Tubesupply. (Hearing site: Dallas, TX.)

MC 85811 (Sub-11F), filed January 4, 1979. Applicant: AMSCO TRANSPORTATION, INC., 10560 Mykawa Rd., P.O. Box 33280, Houston, TX 77033. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from Bossier City, LA, to points in the United States (except AK and HI). (Hearing site: Houston, TX.)

MC 87476 (Sub-15F), filed December 13, 1978. Applicant: CARL SCHAEFER, JR., TRUCK LINES, INC., an Illinois corporation, 2600 Wilburn Ave., P.O. Box 26040, Dayton, OH 45426. Representative: Earl N. Merwin, 85 East Gay St., Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meat by-products, animal foods, and animal feed*, between the facilities of Kal Kan Foods, Inc., at Columbus, OH; on the one hand, and, on the other, points in AL, AR, CO, FL, GA, IA, IL, IN, KS, KY, MI, MN, MO, MS, NC, NE, NY, OH, OK, PA, SC, SD, TN, TX, VA, and WI. (Hearing site: Columbus, OH.)

Note.—The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343(a) (formerly Section 5(2) of the Interstate Commerce Act), or submit an affidavit indicating why such approval is unnecessary.

MC 95876 (Sub-260F), filed December 18, 1978. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave., North, St. Cloud, MN 56301. Representative: Robert D. Givold, 1000 First National Bank Bldg., Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *materials, equipment, and supplies* used in the manufacture and distribution of refrigerators, freezers, and cooling units (except commodities in bulk), from points in the United States (except AK and HI), to the facilities of Franklin Manufacturing Company, at St. Cloud, MN. (Hearing site: St. Paul, MN, or Chicago, IL.)

MC 96878 (Sub-3F), filed January 30, 1979. Applicant: CONSOLIDATED TRANSFER & WAREHOUSE CO., INC., 1251 Taney, North Kansas City, MO 64116. Representative: John E.

Jandera, 641 Harrison Street, Topeka, KS 66603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles and plastic pipe*, from points in OK, to points in AR, CO, IL, IN, IA, KS, LA, MO, NE, OH, and TX. (Hearing site: Oklahoma City or Tulsa, OK.)

MC 98689 (Sub-2F), filed January 17, 1979. Applicant: D. A. BROWN TRUCKING CO., a corporation, P.O. Box 1383, Bakersfield, CA 93302. Representative: Fred H. Mackensen, Suite 400, 9454 Wilshire Blvd., Beverly Hills, CA 90212. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *materials, equipment and supplies* used in the establishment, maintenance, and dismantling of oil, gas and water wells, pipe lines, refineries, and cracking and casing head plants, (2) *materials, and equipment* used in the construction of roads, dams, and bridges (except lumber and forest products), and (3) *materials and equipment* used in the construction and maintenance of power and compressor plants (except lumber and forest products), (a) between points in CA, restricted against the transportation of iron and steel articles and tin plate from or to Pittsburg, CA, and (b) between points in CA, on the one hand, and, on the other, points in AZ, CO, KS, LA, NV, NM, OK, TX, UT, and WY. Condition: Prior or coincidental cancellation, at carrier's written request of its Certificate of Registration in MC 98689 (Sub-1), issued October 31, 1963. (Hearing site: Los Angeles or Bakersfield, CA.)

MC 103051 (Sub-471F), filed January 4, 1979. Applicant: FLEET TRANSPORT COMPANY, INC., a Georgia corporation, 934 44th Ave., N., Nashville, TN 37209. Representative: Russell E. Stone (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum products, vehicle body sealer, and sound deadening compounds*, in bulk, in tank vehicles, from the facilities of Quaker State Oil Refining Corp., in Warren County, MS, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the above-named origin. (Hearing site: Nashville, TN, or Atlanta, GA.)

NOTE.—Dual operations may be involved.

MC 103798 (Sub-29F), filed January 26, 1979. Applicant: MARTEN TRANSPORT, LTD., Route 3, Mondovi, WI 54755. Representative: Robert S. Lee, 1000 First National Bank, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, in interstate or foreign com-

merce, over irregular routes, transporting *cheese*, from St. Olaf, IA, to points in MO. (Hearing site: Des Moines, IA.)

NOTE.—Dual operations are involved in this proceeding.

MC 105045 (Sub-94F), filed January 5, 1979. Applicant: R. L. JEFFRIES TRUCKING CO., INC., 1020 Pennsylvania Street, Evansville, IN 47701. Representative: Richard C. McGinnis, 711 Washington Bldg., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *air compressors and earth-drilling equipment*, and (2) *parts* for the commodities in (1) above, between Claremont, NH, on the one hand, and, on the other, points in the United States (except HI and AK). (Hearing site: Washington, D.C.)

MC 105407 (Sub-17F), filed December 15, 1978. Applicant: HANNIBAL QUINCY TRUCK LINES, INC., 3820 Wisman Lane, Quincy, IL 62301. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Ave., Kansas City, MO 64105. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, as described in Appendix V to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 276, from Chicago, IL, to points in IA, KS, MO, and NE. (Hearing site: Chicago, IL.)

MC 105501 (Sub-33F), filed January 2, 1979. Applicant: TERMINAL WAREHOUSE COMPANY, INC., 1851 Raddison Rd., NE., Blaine, MN 55434. Representative: Joseph J. Dudley, W-1260 First Nat'l Bank Bldg., St. Paul, MN 55101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *sugar*, in bags, from Drayton, ND, and Crookston, MN, to Minneapolis, and St. Paul, MN. (Hearing site: St. Paul or Minneapolis, MN.)

MC 105566 (Sub-185F), filed December 27, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406 Executive Bldg., 6901 Old Keene Mill Rd., Springfield, VA 22150. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *printed matter*, from Old Saybrook, CT, to points in AZ, CA, CO, ID, IL, IN, LA, MT, NV, NM, OK, OR, TX, UT, WA, and WY. (Hearing site: Chicago, IL.)

MC 105566 (Sub-186F), filed December 27, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Rep-

representative: Thomas F. Kilroy, Suite 406 Executive Bldg., 6901 Old Keene Mill Rd., Springfield, VA 22150. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *glassware*, from Mt. Pleasant, PA, to points in AZ, CA, and TX. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 105566 (Sub-188F), filed December 27, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406 Executive Bldg., 6901 Old Keene Mill Rd., Springfield, VA 22150. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *printed matter*, from Jessup, MD, and Scranton and Reading, PA, to points in AZ, CA, CO, ID, MT, NV, NM, OR, TX, UT, WA, and WY. (Hearing site: Washington, DC.)

MC 105886 (Sub-32F), filed December 27, 1978. Applicant: MARTIN TRUCKING, INC., P.O. Box 67, Bessemer, PA 16112. Representative: Stanley E. Levine, 2310 Grant Bldg., Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *brick, clay products, and architectural pavers*, from the facilities of Milliken Brick Company, in Harmar Township (Allegheny County), PA, to points in CT, DE, IL, IN, KY, MD, MA, MI, NJ, NY, OH, RI, TN, VA, WV, WI, and DC. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 106195 (Sub-23F), filed January 30, 1978. Applicant: CLARK BROS. TRANSFER, INC., 900 North First, Norfolk, NE 68701. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products, meat by-products, and articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Norfolk, NE, to points in IL. (Hearing site: Omaha, NE.)

MC 106401 (Sub-62F), filed January 4, 1979. Applicant: JOHNSON MOTOR LINES, INC., P.O. Box 31577, Charlotte, NC 28231. Representative: Roger W. Rash (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *canned goods*, from the facilities of Campbell Soup Co., at or near Maxton, NC, to points in AL, FL, GA,

NC, SC, TN, VA, and DC; and (2) *materials, equipment, and supplies* used in the manufacturing and distribution of canned goods, (except commodities in bulk), in the reverse direction. (Hearing site: Charlotte, NC, or Washington, DC.)

MC 107295 (Sub-904F), filed January 29, 1979. Applicant: PRE-FAB TRANSIT CO., a corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Mack Stephenson, 42 Fox Mill Lane, Springfield, IL 62707. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *pipe, pipe fittings, and accessories* for pipe and pipe fittings, from Birmingham, AL, to points in IA, KS, MO, and NE. (Hearing site: Birmingham, AL, or Atlanta, GA.)

MC 107445 (Sub-20F), filed January 29, 1979. Applicant: UNDERWOOD MACHINERY TRANSPORT, INC., 940 West Troy Ave., Indianapolis, IN 46203. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *commodities* the transportation of which because of size or weight requires the use of special equipment, and (2) *iron, steel, and aluminum articles* (except those described in (1) above) (a) between points IL, IN, IA, KY, MI, MO, and OH, and (b) between points in IL, IN, IA, KY, MI, MO, and OH, on the one hand, and, on the other, points in AL, AR, CT, FL, GA, LA, MA, MD, MN, MS, NJ, NY, NC, OK, PA, RI, SC, TN, TX, VA, WV, WI, and DC. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 107515 (Sub-1202F), filed January 22, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 5th Floor, Lenox Towers South, 3390 Peachtree Road, NE., Atlanta, GA 30326. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *bananas*, and (2) *agricultural commodities* otherwise exempt from economic regulation under 49 U.S.C. §10526(a)(6), when moving in mixed loads with bananas, from Galveston, TX, to points in AR, OK, and MN. (Hearing site: New Orleans, LA.)

NOTE.—Dual operations may be involved.

MC 107515 (Sub-1205F), filed January 31, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Road, NE., 5th Floor, Atlanta, GA 30326. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular

routes, transporting *such commodities* are as are dealt in by food and grocery business houses, from points in CA, to those points in the United States in and east of ND, SD, NE, CO, and NM. (Hearing site: Los Angeles, CA.)

NOTE.—Dual operations may be involved.

MC 109397 (Sub-434F), filed December 13, 1978. Applicant: TRI-STATE MOTOR TRANSIT CO., a Delaware corporation P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *material handling equipment, winches, compaction and road making equipment, rollers, mobile cranes, and highway freight trailers*, and (2) *parts, attachments, and accessories* for the commodities in (1) above (except commodities in bulk), between the facilities of Hyster Company, at or near Danville and Kewanee, IL, Crawfordsville, IN, and Berea, KY, on the one hand, and, on the other, points in AR, CO, IL, IA, IN, KS, KY, LA, MO, NM, OH, OK, TX, and WY. (Hearing site: Washington, DC, or Atlanta, GA.)

MC 109397 (Sub-435F), filed December 18, 1978. Applicant: TRI-STATE MOTOR TRANSIT CO., a Delaware corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *lift trucks, platforms, and hydraulic lifts*, and (2) *parts* for the commodities in (1) above, from points in Sonoma County, CA, to points in the United States (except AK and HI). (Hearing site: San Francisco, CA, or Kansas City, MO.)

MC 109891 (Sub-35F), filed January 4, 1979. Applicant: INFINGER TRANSPORTATION COMPANY, INC., 2811 Carner Ave., P.O. Box 7398, Charleston Heights, SC 29405. Representative: Frank B. Hand, Jr., P.O. Drawer C, Berryville, VA 22611. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *petroleum, petroleum products, vehicle body sealer, and sound deadener compounds*, (except commodities in bulk, in tank vehicles), and *filters*, from the facilities of Quaker State Oil Refining Corporation, in Warren County, MS, to points in AL, FL, GA, KY, NC, SC, and TN; and (2)(a) *petroleum, petroleum products, vehicle body sealer, sound deadener compounds, and filters*, and (b) *materials, equipment, and supplies* used in the manufacture, distribution, and sale of the commodities named in (1) above (except commodities in bulk, in tank vehicles), from points in AL, GA,

KY, and SC, to the facilities of Quaker State Oil Refining Corporation, in Warren County, MS, restricted in parts (1) and (2) above to the transportation of traffic originating at or destined to the above named facilities. (Hearing site: Washington, DC, or Columbia, SC.)

MC 111045 (Sub-161F), filed January 26, 1979. Applicant: REDWING CARRIERS, INC., P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher (same address as applicant). To operate as a *common carrier*, by motor vehicle, interstate or foreign commerce, over irregular routes, transporting *salt and salt products*, from the facilities of Cargill, Inc., at or near Florence, AL, to points in AL, GA, MS, and TN. (Hearing site: Birmingham, AL, or Washington, DC.)

MC 112617 (Sub-418F), filed December 15, 1978. Applicant: LIQUID TRANSPORTERS, INC., 1292 Fern Valley Road, P.O. Box 21395, Louisville, KY 40221. Representative: Charles R. Dunford (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *soybean meal*, in bulk, in tank vehicles, from the facilities of Ralston Purina Company, at Louisville, KY, to the facilities of Lederle Laboratories, Division of American Cyanamid Company, at Pearl River, NY. (Hearing site: Louisville, KY, or Washington, D.C.)

MC 112908 (Sub-9F), filed January 26, 1979. Applicant: KINGSWAY TRANSPORT LIMITED, 123 Rexdale Boulevard, Rexdale, Ontario, Canada M9W 1P3. Representative: Rex Eames, 900 Guardian Bldg., Detroit, MI 48226. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting *commodities* the transportation of which because of size or weight requires the use of special equipment, (1) between Detroit, MI, on the one hand, and, on the other, ports of entry on the International boundary line between the United States and Canada, at Detroit, MI, (2) between Lewiston, NY, on the one hand, and, on the other, ports of entry on the International Boundary line between the United States and Canada, at or near Lewiston, NY, (3) between Niagara Falls, NY, on the one hand, and, on the other, ports of entry on the International Boundary line between the United States and Canada, at Niagara Falls, NY, (4) between Buffalo, NY, on the one hand, and, on the other, ports of entry on the International Boundary line between the United States and Canada, at or near Lewiston, NY, (5) between Port Huron, MI, on the one hand, and, on the other, ports of entry on the International Boundary

line between the United States and Canada, at Port Huron, MI, and (6) between Detroit, MI, on the one hand, and, on the other, ports of entry on the International Boundary between the United States and Canada, at Port Huron, MI. (Hearing site: Detroit, MI, or Chicago, IL.)

MC 113855 (Sub-465F), filed January 29, 1979. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE, Rochester, MN 55901. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *new construction, road building, earth moving, excavating, loading, maintenance, logging, mining, pipelaying, and industrial equipment*, (2) *tractors* (except truck tractors), (3) *generators, engines, and generators and engines combined*, and (4) *attachments, accessories, parts, and supplies* for the commodities in (1), (2), and (3) above (except commodities in bulk), between Portsmouth, VA, on the one hand, and, on the other, points in the United States (including AK but excluding HI). (Hearing site: Washington, D.C.)

MC 113855 (Sub-466F), filed January 30, 1979. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE, Rochester, MN 55901. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *turbines, generators, and motors*, (2) *parts, attachments, and accessories* for the commodities in (1) above, and (3) *castings and wire*, between the facilities of the General Electric Co., at Rotterdam, Schenectady, Buffalo, Troy, and Rochester, NY, and Merrimack, NH, on the one hand, and, on the other, points in OH, IL, and LA. (Hearing site: Washington, D.C.)

MC 113908 (Sub-464F), filed January 26, 1979. Applicant: ERICKSON TRANSPORT CORP., 2105 East Dale Street, P.O. Box 10068 G.S., Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *apple juice*, in bulk, from Rogers, AR, to Kansas City, MO; (2) *lecithin*, in bulk, from Stuttgart, AR, to Hillsdale, MI, Burlington and Milwaukee, WI, Chicago, IL, Carlstadt, NJ, and Carnegie, PA; (3) *frying oil*, in bulk, between Fayetteville, AR, and Milwaukee, WI; and (4) *soybean oil*, in bulk, from Wichita, KS, to the facilities of Tulsa Port Authority—Catoosa, OK, at or near Tulsa, OK. (Hearing

site: Kansas City, MO, or Washington, DC.)

MC 114045 (Sub-527F), filed January 29, 1979. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, Dallas, TX 75261. Representative: J. B. Stuart (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *photographic materials, photographic supplies, and photographic equipment*, in vehicles equipped with mechanical refrigeration, from Clifton, NJ, to Dallas, TX, and Burbank, CA. (Hearing site: Philadelphia, PA, or Dallas, TX.)

MC 114048 (Sub-4F), filed January 25, 1979. Applicant: GEBEKE TRANSPORT, INC., 307 South Third Avenue, Melrose, MN 56352. Representative: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum products*, from Sauk Centre, MN, to points in Roberts, Day, Grant, and Codrington Counties, SD. (Hearing site: Minneapolis, MN.)

MC 114211 (Sub-392F), filed January 4, 1979. Applicant: WARREN TRANSPORT, INC., a Nebraska corporation, P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in, used by, or distributed by dealers and manufacturers of agricultural equipment, industrial equipment, lawn products, and leisure products, (except commodities in bulk), from Belleville, PA, to points in IL, IN, IA, MN, MO, and WI. (Hearing site: Washington, DC, or Chicago, IL.)

MC 114211 (Sub-393F), filed January 5, 1979. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in, used by, or distributed by dealers and manufacturers of agricultural equipment, industrial equipment, lawn products, and leisure products (except commodities in bulk), from New Holland and Mountville, PA, to points in IL, IN, IA, MN, MO, and WI. (Hearing site: Washington, DC, or Chicago, IL.)

MC 114211 (Sub-394F), filed January 5, 1979. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant).

To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *agricultural machinery*, and (2) *materials, supplies and parts* used in manufacture, distribution and sale of agricultural machinery, from the facilities of Deweze Manufacturing, at Harper, KS, to points in the United States (including AK but excluding HI). (Hearing site: Wichita, KS, or Kansas City, KS.)

MC 114211 (Sub-395F), filed January 5, 1979. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in, used by, and distributed by dealers and manufacturers of agricultural equipment, industrial equipment, lawn products, and leisure products (except commodities in bulk), from Fowler, CA, to (1) points in AL, CT, DE, FL, GA, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, PA, RI, SC, SD, TN, VT, VA, WV, and WI, and (2) ports of entry on the International Boundary line between the United States and Canada, in WA, ID, and MT. (Hearing site: Washington, D.C., or Chicago, IL.)

MC 114211 (Sub-396F), filed January 5, 1979. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from the facilities of Bullmoose Tube Company, at or near Gerald, MO, to points in IA, IL, MN, WI, SD, NE, and KS. (Hearing site: St. Louis, MO, or Des Moines, IA.)

MC 115311 (Sub-334F), filed January 5, 1979. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: K. Edward Wolcott, 1200 Gas Light Tower, 235 Peachtree St., NE., Atlanta, GA 30303. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *petroleum, petroleum products, vehicle body sealer, and sound deadener compounds* (except commodities in bulk, in tank vehicles), and *filters*, from the facilities of Quaker State Oil Refining Corporation, in Warren County, MS, to points in AL, FL, GA, KY, MD, NY, NC, OH, PA, RI, SC, TN, VA, WV, and DC; and (2) *petroleum, petroleum products, vehicle body sealer, sound deadener compounds, and filters*, and *materials, equipment, and supplies* as

are used in the manufacture, distribution and sale of the commodities named in (1) above (except commodities in bulk, in tank vehicles), from points in AL, GA, KY, NY, OH, PA, RI, SC, VA, and WV, to the facilities of Quaker State Oil Refining Corporation, in Warren County, MS. (Hearing site: Jackson, MS, or New Orleans, LA.)

MC 115496 (Sub-111F), filed December 11, 1978. Applicant: LUMBER TRANSPORT, INC., P.O. Box 111, Cochran, GA 31014. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *newsprint paper*, from points in Laurens County, GA, to points in AL, AR, FL, GA, IL, IN, KS, KY, LA, MD, MO, MS, NC, OH, OK, PA, SC, TN, TX, VA, and WV, and (2) *waste newspapers, and materials, equipment, and supplies* used in the manufacture of newsprint paper, in the reverse direction. (Hearing site: Atlanta, GA.)

MC 116325 (Sub-79F), filed January 29, 1979. Applicant: JENNINGS BOND d.b.a. BOND ENTERPRISES, P.O. Box 8, Lutesville, MO 63762. Representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, MO 63101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *springs, and spring parts, and accessories* for springs, from points in Polk County, IA, to points in the United States (except AK and HI), and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, (except commodities in bulk), in the reverse direction. (Hearing site: Des Moines, IA.)

MC 117165 (Sub-51F), filed January 15, 1979. Applicant: ST. LOUIS FREIGHT LINES, INC., P.O. Box 2140, Michigan City, IN 46360. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *salt*, in bags, from Manistee, MI, to points in IL, IA, MO, WI, those in IN south of U.S. Hwy 40, and those in OH on, south, and east of a line beginning at the IN-OH State line, and extending along U.S. Hwy 40 to junction OH Hwy 13, then along OH Hwy 13, to Lake Erie. (Hearing site: Chicago, IL.)

MC 117686 (Sub-233F), filed December 26, 1978. Applicant: HIRSCHBACH MOTOR LINES, INC., P.O. Box 417, Sioux City, IA 51102. Representative: George L. Hirschbach (same address as applicant). To operate as a

common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *toothpaste*, from Elizabethton, TN, to the facilities of LaMaur, Inc., at or near Minneapolis, MN. (Hearing site: Minneapolis, MN, or Washington, DC.)

NOTE.—Dual operations may be involved in this proceeding.

MC 117765 (Sub-250F), filed January 16, 1979. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *malt beverages*, in containers, from St. Paul, MN, to points in TX. (Hearing site: Oklahoma City, OK, or Houston, TX.)

MC 117786 (Sub-48F), filed December 26, 1978. Applicant: RILEY WHIT-TLE, INC., P.O. Box 19038, Phoenix, AZ 85005. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper products*, from Ludlow, KY, and points in OH, to points in AL, AZ, AR, CA, CO, GA, ID, KS, LA, MS, MO, MT, NM, NV, OK, OR, TN, TX, UT, WA, and WY. (Hearing site: Phoenix, AZ, or Cincinnati, OH.)

MC 117786 (Sub-49F), filed December 27, 1978. Applicant: RILEY WHIT-TLE, INC., P.O. Box 19038, Phoenix, AZ 85005. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned seafood and pet food*, from San Diego, CA, to points in AZ, OR, and WA. (Hearing site: Phoenix, AZ.)

MC 117786 (Sub-50F), filed December 27, 1978. Applicant: RILEY WHIT-TLE, INC., P.O. Box 19038, Phoenix, AZ 85005. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *pet foods, cereals, and bakery goods*, and (2) *commodities* used in the manufacture and distribution of the commodities in (1) above, from the facilities of Ralston Purina Company, at Sparks, NV, to the facilities of Ralston Purina Company, at Flagstaff, AZ. (Hearing site: Phoenix, AZ.)

MC 118831 (Sub-166F), filed October 6, 1978. Applicant: CENTRAL TRANSPORT, INCORPORATED, P.O. Box 7007, High Point, NC 27264. Representative: Ben H. Keller III (same address as applicant). To operate as a

common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting dry terphthalic acid, from points in Berkeley County, SC, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Washington, DC.)

MC 119641 (Sub-155F), filed January 2, 1979. Applicant: RINGLE EXPRESS, INC., 450 East Ninth St., Fowler, IN 47944. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting such commodities as are dealt in, used by, and distributed by manufacturers and dealers of agricultural equipment, industrial equipment, lawn products, and leisure products (except commodities in bulk), from the facilities of Sperry New Holland Division of Sperry Rand Corporation, at or near Grand Island and Lexington, NE, to points in IL, IN, and MI, restricted to the transportation of traffic originating at the above-named origin and destined to the above-named destinations (except those in foreign commerce). (Hearing site: Washington, DC.)

MC 119689 (Sub-21F), filed January 30, 1979. Applicant: PEERLESS TRANSPORT CORP., 2701 Railroad St., Pittsburgh, PA 15222. Representative: John A. Vuono, 2310 Grant Bldg., Pittsburgh, PA 15219. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) starch and chemicals (except commodities in bulk), from the facilities of National Starch & Chemical Corp., at Indianapolis, IN, to points in PA, and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 119741 (Sub-132F), filed January 4, 1979. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave., NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting such commodities as are dealt in by chain grocery and food business houses (except commodities in bulk, in tank vehicles), between points in AR, CO, IL, IN, IA, KS, KY, MI, MN, MO, NE, ND, OH, OK, SD, TX, and WI, restricted to the transportation of traffic originating at or destined to the facilities of Shurfine-Central Corporation. (Hearing site: Chicago, IL.)

MC 119988 (Sub-185F), filed January 29, 1979. Applicant: GREAT

WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) household appliances, and (2) parts and accessories for household appliances, between Little Rock, AR, on the one hand, and, on the other, Louisville, KY, Chicago, IL, Milwaukee, WI, Columbia, MD, Columbia, TN, Decatur, AL, and Bloomington, IN, and points in LA, MS, NM, OK, and TX. (Hearing site: Dallas, TX.)

NOTE.—Dual operations are involved in this proceeding.

MC 119988 (Sub-186F), filed February 1, 1979. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting such commodities as are dealt in or used by discount and variety stores (except commodities in bulk), from points in AL, CA, FL, GA, IL, KY, LA, MS, NC, OH, TN, and TX, to the facilities of Wal-Mart Stores, Inc., at Bentonville and Searcy, AR. (Hearing site: Dallas, TX.)

NOTE.—Dual operations are involved in this proceeding.

MC 120618 (Sub-17F), filed January 25, 1979. Applicant: SCHALLER TRUCKING CORPORATION, 5700 West Minnesota Street, Indianapolis, IN 46241. Representative: John R. Bagileo, 918 18th Street, NW., Washington, DC 20006. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes transporting such commercial papers, documents, records, and written instruments (except currency and negotiable instruments) as are used in the business of banks, banking institutions, data processors financial institutions, and insurance companies, between Cincinnati, OH, and points in IN, those in IL on and east of U.S. Hwy 51, and those in KY on and north of a line beginning at the KY-IL State line and extending along U.S. Hwy 51 to junction Purchase Parkway, then along Purchase Parkway to junction U.S. Hwy 641, then along U.S. Hwy 641 to junction Western Kentucky Parkway, then along Western Kentucky Parkway to junction Interstate Hwy 65, then along Interstate Hwy 65 to junction Blue Grass Parkway, then along Blue Grass Parkway to junction KY Hwy 169, then along KY Hwy 169 to junction Interstate Hwy 75, and then along Interstate Hwy 75 to the KY-OH State

line. (Hearing site: Indianapolis or Terre Haute, IN.)

MC 120761 (Sub-50F), filed January 2, 1979. Applicant: NEWMAN BROS. TRUCKING COMPANY, a corporation, 6559 Midway Rd., P.O. Box 18728, Fort Worth, TX 76118. Representative: Clint Oldham, 1108 Continental Life Building, Fort Worth, TX 76102. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting roofing materials, from the facilities of Johns-Manville Sales Corporation, at or near Marrero, LA, to points in OK, and AR. (Hearing site: Dallas, TX.)

MC 123778 (Sub-46F), filed January 29, 1979. Applicant: JALT CORP., d.b.a. UNITED NEWSPAPER DELIVERY SERVICE, 802 Raritan Center, Edison, NJ 08817. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. To operate as a contract carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting magazines, from Edison, NJ, to Wilmington, DE, points in CT, NJ, and DC, those points in NY on and east of NY Hwy 14, and those in MD and PA on and east of US Hwy 15, under contract with World Color Press, of Effingham, IL. (Hearing site: New York, NY.)

MC 124554 (Sub-30F), filed January 6, 1979. Applicant: LANG CARTAGE CORP., 1308 South West Avenue, Waukesha, WI 53187. Representative: Richard C. Alexander, 710 N. Plankinton, Avenue, Milwaukee, WI 53203. To operate as a contract carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting such merchandise as is dealt in by wholesale drug business houses, from La Crosse, WI, to points in Blue Earth, Brown, Carver, Cottonwood, Faribault, Jackson Kandiyohi, Le Sueur, McLeod, Martin, Meeker, Nicolet, Pope, Redwood, Renville, Rice, Scott, Sibley, Stearns, Watonwan, and Wright Counties, MN, under contract with Yahr-Lange La Crosse Drug Company, Inc., of La Crosse, WI. (Hearing site: Chicago, IL.)

MC 124711 (Sub-80F), filed January 4, 1979. Applicant: BECKER CORPORATION, P.O. Box 1050, El Dorado, KS 67042. Representative: Norman A. Cooper (same address as applicant). To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting propane, in bulk, from the facilities of Mid America Pipeline Terminal, at or near Greenwood, NE, to points in SD. Condition: To the extent a certificate is granted in this proceeding authorizing the transportation of propane, it will expire 5 years from

the date of issuance. (Hearing site: Wichita or Kansas City, KS.)

MC 124841 (Sub-8F), filed January 2, 1979. Applicant: D. D. JACOBS, INC., 903 Irene, Walla Walla, WA 99362. Representative: George R. LaBissoniere, 1100 Norton Bldg., Seattle, WA 98104. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *frozen foods*, and (2) *equipment and supplies* used in the manufacture, distribution, and storage of frozen foods, between Bettendorf, IA, Plover, WI, Clearfield, UT, Brooks, Hermiston, Milwaukie, Portland, Salem, Hillsboro, Woodburn, Ontario, Weston, Pendleton, and Milton-Freewater, OR, Walla Walla, Spokane, Quincy, Burlington, Wheeler, and Connell, WA, and Heyborn, Nampa, Caldwell, Burley, Lewiston, and American Falls, ID, under contract with Termicold Corporation, of Portland, OR, and D & K Frozen Foods, Inc., of Walla Walla, WA. (Hearing site: Portland, OR.)

MC 124947 (Sub-123F), filed December 13, 1978. Applicant: MACHINERY TRANSPORTS, INC., 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: David J. Lister (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *material handling equipment, winches, compaction and road making equipment, rollers, mobile cranes, and highway freight trailers*, and (2) *parts, attachments, and accessories*, for the commodities in (1) above, (except commodities in bulk), between the facilities of Hyster Company, at or near Danville and Kewanee, IL, Crawfordsville, IN, and Berea, KY, on the one hand, and, on the other, points in AR, CO, IL, IN, KS, LA, MO, NM, OH, OK, TX, and WY, restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: Washington, DC, or Atlanta, GA.)

MC 124988 (Sub-10F), filed January 30, 1979. Applicant: TRUCK SERVICE COMPANY, 2169 E. Blaine, Springfield, MO 65803. Representative: John L. Alfano, 550 Mamaroneck Avenue, Harrison, NY 10528. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals* (except in bulk), from Lake Charles, LA, Akron, Barberton, Cleveland, and Delaware, OH, Corpus Christi, TX, and Natrium, WV, to points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, and WY, under contract with PPG Industries, Inc., of Pittsburgh, PA. (Hearing site: Pittsburgh, PA.)

MC 125335 (Sub-49F), filed January 26, 1979. Applicant: GOOD-WAY, INC., P.O. Box 2283, York, PA 17405. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *petroleum, petroleum products, vehicle body sealer and sound deadener compounds*, (except commodities in bulk, in tank vehicles), and *filters*, from points in Warren County, MS, to points in FL, GA, IL, IA, KS, MO, NE, NJ, NY, OK, PA, TN, TX, and WI, and (2)(a) *petroleum, petroleum products, vehicle body sealer, and sound deadener compounds*, and *filters*, and (b) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk, in tank vehicles), from points in IL, NY, and PA, to points in Warren County, MS, restricted in parts (1) and (2) above, to the transportation of traffic originating at or destined to the facilities of Quaker State Oil Refining Corporation, in Warren County, MS. (Hearing site: Harrisburg, PA, or Lincoln, NE.)

MC 125368 (Sub-44F), filed January 15, 1979. Applicant: CONTINENTAL COAST TRUCKING COMPANY, INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: Roland Lowell, Sixth Floor, United American Bank Bldg., Nashville, TN 37219. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *glass tubing and rubber articles*, between the facilities of Becton, Dickinson and Company, at Sumter, SC, on the one hand, and, on the other, Broken Bow, Columbus, and Holdrege, NE. (Hearing site: Washington, DC, or Chicago, IL.)

MC 125535 (Sub-13F), filed January 30, 1979. Applicant: NATIONAL SERVICE LINES, INC. OF NEW JERSEY, 12015 Manchester Road, Suite 118, St. Louis, MO 63131. Representative: Donald S. Helm (same address as applicant). To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *cooling rooms, cooling and freezing machines, evaporators, counters, shelving, and hardware*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk in tank vehicles), between the facilities of Hussmann Refrigerator Company, at Bridgeton, MO, on the one hand, and, on the other, points in the United States in and east of ND, SD, NE, KS, OK, and TX, under contract with Hussmann Refrigerator Company, of Bridgeton,

MO. (Hearing site: St. Louis, MO, or Washington, DC.)

MC 126118 (Sub-123F), filed January 29, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by manufacturers and distributors of printed matter, between Lincoln, NE, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Lincoln, NE.)

NOTE.—Dual operations are involved in this proceeding.

MC 126118 (Sub-124F), filed February 5, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *malt beverages*, from New Orleans, LA, to points in GA. (Hearing site: New Orleans, LA, or Lincoln, NE.)

NOTE.—Dual operations are involved in this proceeding.

MC 126118 (Sub-125F), filed February 5, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *malt beverages*, from Cincinnati, OH, and Belleville, IL, to points in OK. (Hearing site: Oklahoma City, OK.)

NOTE.—Dual operations are involved in this proceeding.

MC 126118 (Sub-126F), filed February 5, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *clay and clay products*, from the facilities of Waverly Mineral Products Company, at or near Meigs, GA, to points in DE, MD, NK, NY, VA, WV, and DC. (Hearing site: Lincoln, NE.)

NOTE.—Dual operations are involved in this proceeding.

MC 126139 (Sub-6F), filed February 1, 1979. Applicant: AARON SMITH TRUCKING COMPANY, INC., P.O. Box 153, Dudley, NC 28333. Representative: John N. Fountain, P.O. Box 2246, Raleigh, NC 27602. To operate as a *common carrier*, by motor vehicle, in

interstate or foreign commerce, over irregular routes, transporting *canned and bottle foodstuffs*, from the facilities of Bruce Foods Corporation, at Wilson, NC, to points in CO. (Hearing site: Raleigh, NC.)

MC 126305 (Sub-110F), filed January 30, 1979. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., R.D. 1, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *composition boards and sheets*, from the facilities of Champion International Corp., at or near Catawba, SC, to points in AL, AR, LA, MS, TN, and TX, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Montgomery or Birmingham, AL.)

MC 126305 (Sub-111F), filed January 30, 1979. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., R.D. 1, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber and composition board*, from Charleston, SC, to points in GA, TN, AL, MS, LA, TX, and AR, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Montgomery or Birmingham, AL.)

MC 129455 (Sub-37F), filed January 26, 1979. Applicant: CARRETTA TRUCKING, INC., South 160, Route 17 North, Paramus, NJ 07652. Representative: Charles J. Williams, 1815 Front Street, Scotch Plains, NJ 07076. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *drugs and toilet preparations* (except commodities in bulk), from Hillside, NJ, Franklin, KY, and St. Louis, MO, to points in WA, NV, NM, OK, KS, MO, AR, WI, MN, NE, MS, AL, SC, and NC, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk), from points in WA, OR, CA, NV, UT, AZ, CO, NM, TX, OK, KS, NE, AR, LA, MS, AL, FL, GA, KY, SC, WI, IL, MN, OH, WV, VA, MD, DE, CT, MA, RI, NH, VT, and ME, to Hillside, NJ, St. Louis, MO, and Franklin, KY, under contract with Bristol-Myers Products, of Hillside, NJ. (Hearing site: New York, NY.)

NOTE.—Dual operations may be involved.

MC 133788 (Sub-10F), filed January 30, 1979. Applicant: E-Z MESSENGER

SERVICE, INC., 61 Voorhis Lane, Hackensack, NJ 07601. Representative: Thomas F. X. Foley, State Hwy 34, Colts Neck, NJ 07722. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *cosmetics, toiletries, computer tapes, costume jewelry, and vitamins*, and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, (a) between the facilities of Avon Products, Inc., at or near Newark, DE, Mansfield, MA, Hillburn, Middletown, New York, Rye, and Suffern, NY, and (b) between the facilities of Avon Products, Inc., named in (a) above, on the one hand, and, on the other, Boston, Dighton, Florence, and Pittsfield, MA, Baltimore, MD, Harriman, Nanuet, New York, and Port Jervis, NY, Montgomery and Philadelphia, PA, Providence, RI, points in Suffolk County, NY, and points in CT and NJ, under contract in (1) and (2) above with Avon Products, Inc., of New York, NY. (Hearing site: Newark, NJ, or New York, NY.)

MC 134105 (Sub-45F), filed January 8, 1979. Applicant: CLERYVALE TRANSPORT, INC., 1318 East 23rd Street, Chattanooga, TN 37404. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum, petroleum products, vehicle body sealer, and sound deadener compounds* (except commodities in bulk, in tank vehicles), and *filters*, from points in Warren County, MS, to points in AL, AR, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MO, NE, NM, NC, ND, OK, OR, SC, SD, TN, TX, UT, VA, WA, and WI, and (2) *petroleum, petroleum products, vehicle body sealer, sound deadener compounds, and filters*, and *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk, in tank vehicles), from points in AL, GA, IL, IN, KY, OH, OK, SC, and VA, to points in Warren County, MS, restricted in parts (1) and (2) above, to the transportation of traffic originating at or destined to the facilities of Quaker State Oil Refining Corporation, in Warren County, MS. (Hearing site: Pittsburgh, PA.)

MC 134286 (Sub-91F), filed December 12, 1978. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat prod-*

ucts and meat byproducts, and articles distributed by meatpacking houses, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of MBPXL Corporation, at or near Dodge City, KS, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: Kansas City, MO, or Omaha, NE.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343(a) (formerly Section 5(2) of the Interstate Commerce Act), or submit an affidavit indicating why such approval is unnecessary.

MC 134477 (Sub-301F), filed December 13, 1978. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from the facilities of ABC-Trans National Transport, Inc., and Acme Fast Freight, Inc., at Atlanta, GA, and Charlotte, NC, to Chicago, IL, restricted to the transportation of traffic moving on bills of lading of freight forwarders as defined in 49 U.S.C. § 10102(8) formerly Section 402(a)(5) of the Interstate Commerce Act. (Hearing site: St. Paul, MN.)

MC 134477 (Sub-304F), filed December 14, 1978. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *heating and cooling units*, and (2) *materials, equipment, and supplies* used in the installation of the commodities in (1) above, from Fort Worth, TX, to points in CO, IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, and WI. (Hearing site: St. Paul, MN.)

MC 134755 (Sub-167F), filed January 15, 1979. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *pe-*

roleum, petroleum products, vehicle body sealer and sound deadener compounds, (except commodities in bulk, in tank vehicles), and filters, from points in Warren County, MS, to points in AR, AZ, CA, CO, IA, IL, IN, KS, MI, MN, MO, NE, NV, NM, OK, OR, TX, UT, WA, and WI, and (2)(a) petroleum, petroleum products, vehicle body sealer and sound deadener compounds, and filters, and (b) materials, equipment, and supplies used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk, in tank vehicles), from points in IL, IN, and OK, to points in Warren County, MS, restricted to the transportation of traffic originating at or destined to the facilities of Quaker State Refining Corporation, in Warren County, MS. (Hearing site: Pittsburgh, PA.)

NOTE.—Dual operations may be involved.

MC 135215 (Sub-5F), filed January 19, 1979. Applicant: BULK TRANSPORTATION, a corporation, 415 Lemon Avenue, Walnut, CA 91789. Representative: Melvin G. Thurman (same address as applicant). To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting lime, from Nelson, AZ, to points in CA. (Hearing site: Los Angeles, CA.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343 [formerly Section 5(2) of the Interstate Commerce Act], or submit an affidavit indicating why such approval is unnecessary.

MC 135568 (Sub-2F), filed January 30, 1979. Applicant: CHRISTIE RIGGING & TRUCKING CO., a corporation, 182 Oakwood Drive, Glastonbury, CT 06033. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (3) aircraft service vehicles, (2) parts and accessories for aircraft service vehicles, (1) aircraft airconditioning equipment, and (4) engine parts used in the operation of aircraft engines and utility power plants, between Windsor, CT, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Hartford, CT.)

MC 136168 (Sub-29F), filed January 8, 1979. Applicant: WILSON CERTIFIED EXPRESS, INC., P.O. Box 3326, Des Moines, IA 50316. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. To operate as a contract carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting canned goods, from Auburndale and Tampa,

FL, to Frankfort, IN, under contract with Del Monte Corporation, of San Francisco, CA. (Hearing site: San Francisco, CA.)

NOTE.—Dual operations are involved in this proceeding.

MC 136268 (Sub-18F), filed January 25, 1979. Applicant: WHITEHEAD SPECIALTIES, INC., 1017 Third Avenue, Monroe, WI 53566. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting salt (except in bulk), from Hutchinson, KS, Manistee and Marysville, MI, and Rittman, OH, to points in WI. (Hearing site: Madison or Milwaukee, WI.)

MC 136315 (Sub-56F), filed January 22, 1979. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 22-A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) building materials, and (2) materials and supplies used in the manufacture of the commodities in (1) above, (except commodities in bulk), between the facilities of GAF Corporation, at or near Annapolis, Kansas City, and St. Louis, MO, Chester, SC, Dallas, TX, Erie, PA, Joliet, IL, Minneapolis, MN, Mobile, AL, Mt. Vernon, IN, Savannah, GA, and Tampa, FL, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NC, OH, OK, PA, SC, TN, TX, VA, WV, and WI. (Hearing site: Washington, DC, or Jackson, MS.)

NOTE.—Dual operations may be involved.

MC 136325 (Sub-4F), filed January 11, 1979. Applicant: CUFURAY, LTD., Route 1, Box 333, Delavan, WI 53115. Representative: David V. Purcell, 111 East Wisconsin Avenue, Milwaukee, WI 53202. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) metal containers and container components, and materials, equipment, and supplies used in the manufacture and distribution of metal containers and canned goods, (except commodities in bulk), between Arlington, Markesan, and Plover, WI, on the one hand, and, on the other, Wells and Sleepy Eye, MN, and (2) canned goods, from Wells and Sleepy Eye, MN, to Arlington, Markesan, and Plover, WI, under contract with Del Monte Corporation, of San Francisco, CA. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 136605 (Sub-86F), filed January 18, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (Same address as applicant). To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) furnaces, and house heating hot air parts, and (2) components and accessories used in the installation of the commodities in (1) above, from the facilities of Environmental Control Systems, at or near Plymouth, MN, to points in the United States in and west of ND, SD, NE, KS, OK, and TX (except AK and HI). (Hearing site: Minneapolis, MN.)

MC 136605 (Sub-88F), filed January 2, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (Same address as applicant). To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting overhead garage doors, garage door hardware, garage service doors, and millwork, from the facilities of Phenix Manufacturing Company, Inc., at or near Shawano, WI, to points in MN, ND, SD, IA, NE, KS, MO, CO, and UT. (Hearing site: Minneapolis, MN, or Milwaukee, WI.)

MC 138157 (Sub-105F), filed December 13, 1978. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, a California Corporation, 2931 South Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting wheels and parts for wheels, from the facilities of Appliances Industries, at or near Compton, CA, to those points in the United States in and east of MN, IA, MO, KS, OK, and TX. (Hearing site: Los Angeles, CA.)

NOTE.—Dual operations are involved in this proceeding.

MC 138686 (Sub-5F), filed December 26, 1978. Applicant: L. C. W. TRUCKING, INC., P.O. Box 718, Edinburg, TX 78539. Representative: M. Ward Bailey, 2412 Continental Life Bldg., Ft. Worth, TX 76102. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting malt beverages, from San Antonio, TX, to points in AZ, CO, NV, and NM.

NOTE.—Dual operations may be involved in this proceeding. (Hearing site: San Antonio or Dallas, TX.)

MC 138882 (Sub-180F), filed December 4, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O.

Drawer 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber and lumber mill products*, from points in CA to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Sacramento, CA, or Birmingham, AL.)

MC 139261 (Sub-13F), filed December 26, 1978. Applicant: BUCKEYE EXPRESS, INC., P.O. Box 368, Perrysburg, OH 43551. Representative: Michael M. Briley, 300 Madison Ave., 12th FL., Toledo, OH 43603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *foodstuffs* (except commodities in bulk), from Fair Lawn, NJ and Philadelphia, PA, to points in the United States (except AK and HI); and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk), in the reverse direction, under contract with Nabisco, Inc., of East Hanover, NJ. (Hearing site: Toledo, OH, or Washington, DC.)

MC 139495 (Sub-410F), filed January 25, 1979. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Los Angeles, CA, Denver, CO, Dallas, TX, Kansas City, KS, Minneapolis, MN, La Grange, IL, Morrow, GA, Columbus, OH, Pittsburgh, PA, North Bergen, NJ, and Boston, MA, restricted to the transportation of traffic originating at or destined to the facilities of DCW-USA, Inc. (Hearing site: Washington, DC.)

MC 139495 (Sub-411F), filed January 26, 1979. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* from New Orleans, LA, to points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 139495 (Sub-412F), filed January 29, 1979. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th

Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, from New Iberia and Lafayette, LA, to points in AZ, CA, CO, NM, OR, TX, and WA. (Hearing site: Washington, DC.)

MC 139658 (Sub-27F), filed January 12, 1979. Applicant: HARRY POOLE, INC., 2322 Kensington Road, Macon, GA 31201. Representative: William Addams, Suite 212, 5299 Roswell Road, NE, Atlanta, GA 30342. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *flue dust*, in bulk, in dump vehicles, from Tampa, FL, to the facilities of Stoller, Mii, Division of Stoller Chemical Co., Inc., at or near Jericho, SC. (Hearing site: Atlanta, GA.)

MC 139906 (Sub-25F), filed December 4, 1978. Applicant: INTERSTATE CONTRACT CARRIER CORP., P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *rubber products, chemicals, and materials, equipment and supplies* used in manufacture of rubber products and chemicals, (except commodities in bulk, in tank vehicles), (a) from Naugatuck, CT, Detroit, MI, Scottsville, VA, Shelbyville, TN, Winnsboro, SC, Opelika, AL, Los Angeles, CA, and Eau Claire, WI, to Chicopee, MA, and (b) from Chicopee, MA, to Detroit, MI, Opelika, AL, Los Angeles, CA, and Eau Claire, WI; (2) *tire fabric*, from Lynchburg, VA, to Chicopee, MA; (3) *tires, tubes, curing bags, molds, fabric, and compounds*, (a) between Atlanta, GA, Chattanooga, TN, Santa Ana, CA, and Minneapolis, MN, on the one hand, and, on the other, Chicopee, MA, and (b) between Holyoke, Springfield, and Easthampton, MA, on the one hand, and, on the other, Detroit, MI, Opelika, AL, Atlanta, GA, Chattanooga, TN, Los Angeles and Santa Ana, CA, Eau Claire, WI, and Minneapolis, MN; (4) *tires*, from Chicopee, MA, to the facilities of Uniroyal, Inc., at or near Port Clinton, OH; (5) *rubber products*, (except in bulk), from Chicopee, MA and Sandy Hook, CT, to points in FL, ID, KS, MS, MT, NE, NV, ND, SD, UT, and WY; (6) (a) *rubber, rubber products and rubber compounds*, (except commodities in bulk and commodities requiring special equipment), and (b) *materials, equipment and supplies* used in the manufacture of the commodities in (6)(a) above, between Chicopee, MA, on the one hand, and, on

the other, points in CT, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VA, VT, WV, WI, and DC; (7) *tire fabric*, from Murfreesboro, TN, to Chicopee, MA; (8) *tires and tire accessories*, (a) from Holyoke, Springfield, East Hampton, and Ludlow, MA and Enfield, CT, to points in the United States (except AK, CT, FL, GA, HI, KS, NE, NC, OH, RI, SC, and VA), and (b) from Chicopee, MA, to points in AL and TN; (9) *tire accessories*, from Chicopee, MA, to points in ID, MS, MT, NV, ND, SD, UT, and WY, and (10) *materials, equipment, and supplies* used in the manufacture of tires and tire accessories, (except commodities in bulk and those requiring special equipment), from points in the United States (except AK, CT, FL, GA, HI, KS, NE, NC, OH, RI, SC, and VA), to Holyoke, Springfield, East Hampton, and Ludlow, MA and Enfield, CT, and (b) from points in AL, ID, MS, MT, NV, ND, SD, TN, UT, and WY, to Chicopee, MA. **CONDITION:** Prior or coincidental cancellation, at applicant's written request of duplicate parts of its permits in MC-134599 and Sub-Nos. thereunder. (Hearing site: Lincoln, NE, or Salt Lake City, UT.)

NOTE:—Dual operations are involved in this proceeding.

MC 140166 (Sub-9F), filed December 26, 1978. Applicant: JOHN B. McNABB, doing business, as McNABB FARMS, P.O. Box 4366, Pocatello, ID 83201. Representative: Dennis M. Olsen 485 E Street, Idaho Falls, ID 83401. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *animal and poultry feed and feed ingredients*, between Pocatello, ID, on the one hand, and, on the other, points in Klamath and Lake Counties, OR and Modoc, Siskiyou, Shasta, Lassen, Tehama, Sutter, and San Joaquin Counties, CA. (Hearing site: Boise, ID, or Salt Lake City, UT.)

MC 140829 (Sub-177F), filed January 11, 1979. Applicant: CARGO CONTRACT CARRIER CORP., a New Jersey Corporation, P.O. Box 206, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Ave., Morristown, NJ 07960. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *dough conditioners and whiteners, and edible flour products*, from Kankakee, IL, to points in DE, MA, NY, OH, PA, and TX. (Hearing site: Washington, DC.)

NOTE: Dual operations may be involved in this proceeding.

MC 141138 (Sub-15F), filed January 9, 1979. Applicant: STEVE SCHRANZ TRUCKING, INC., 350 Honeysuckle Lane, Belleville, IL 62221. Representa-

tive: Ernest A. Brooks II, 1301 Ambassador Bldg, St. Louis, MO 63101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cottonseed meal*, in bulk, from points in AR, MO, and MS, to Princeton, IL. (Hearing site: St. Louis, MO, or Washington, DC.)

MC 142529 (Sub-1F), filed February 5, 1979. Applicant: FRANK J. DAL GALLO TRUCKING, INC., 300 E. Lake St., Mount Shasta, CA 96067. Representative: Michael S. Rubin, 256 Montgomery St., San Francisco, CA 94194. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wood residuals*, between points in Shasta and Siskiyou Counties, CA, on the one hand, and, on the other, points in Klamath County, OR, under contract with California Forest Products Business Division, Kimberly Clark Corporation, of Neenah, WI. (hearing site: San Francisco, CA.)

MC 142668 (Sub-18F), filed January 24, 1979. Applicant: AERO DISTRIBUTING CO., INC., 4814 Fulton Industrial Blvd, Atlanta, GA 30336. Representative: K. Edward Wolcott, 1200 Gas Light Tower, 235 Peachtree Street, NE, Atlanta, GA 30303. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such merchandise* as is marked by home products distributors, (1) from Chicago, IL, to points in IA, KS, MI, MO, NE, ND, and SD, and (2) from Atlanta, GA, to points in AL, FL, LA, MS, NC, SC, TN, and VA, under contract with Shaklee Corporation, of Hayward, CA. (Hearing site: San Francisco, CA, or Atlanta, GA.)

MC 142668 (Sub-19F), filed January 17, 1979. Applicant: AERO DISTRIBUTING CO., INC., 4814 Fulton Industrial Blvd., Atlanta, GA 30336. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *spray adhesive adjuvant*, from Harahan, LA, to the facilities of Amway Corporation, at or near Atlanta, GA, under contract with Amway Corporation, of Atlanta, GA. (Hearing site: Atlanta, GA.)

MC 142715 (Sub-23F), filed January 19, 1979. Applicant: LENERTZ, INC., 8425 Hudson Road, Lake Elmo, MN 55042. Representative: Andrew R. Clark, 1000 First National Bank, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk), from points in WI, to those points in

the United States in and east of ND, SD, WY, CO, OK, and TX, restricted to the transportation of traffic originating at the facilities of The Larsen Company. (Hearing site: Green Bay, WI.)

MC 142715 (Sub-24F), filed January 29, 1979. Applicant: LENERTZ, INC., 8425 Hudson Road, Lake Elmo, MN 55042. Representative: Andrew R. Clark, 1000 First National Bank, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such merchandise* as is dealt in by department stores (except foodstuffs and commodities in bulk), and (2) *foodstuffs* (except commodities in bulk), when moving in mixed loads with the commodities in (1) above, from points in the United States in and east of ND, SD, NE, CO, NM, and TX, to the facilities of Shopko Stores, Inc., in MN, SD, WI, and the Upper Peninsula of MI, restricted to the transportation of traffic destined to the facilities of Shopko Stores, Inc., at the indicated destinations. (Hearing site: Minneapolis, MN.)

MC 142911 (Sub-4F), filed December 21, 1978. Applicant: FRAWLEY BUREAU OF INVESTIGATION CORP., 182 Beach 114th St., Rockaway Park, NY 11694. Representative: John M. Frawley (same address as applicant). To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *oil samples, exploration samples, core samples, jet fuel samples, gas samples, water samples, test results, computer printouts, and payroll information*, (2) *supporting documents* for the commodities named in (1) above, and (3) *currency, coin, checks, delivery receipts, and invoices*, (a) between Port Jefferson, NY, on the one hand, and, on the other, Sewaren and West Orange, NJ, (b) between West Orange, NJ, on the one hand, and, on the other, Syracuse and Rennsalaer, NY, Bridgeport, CT, Fall River and Waltham, MA, South Portland, ME, Linden Bank, NJ, Valley Forge, PA, Columbia and Baltimore, MD, and Chesapeake, Roanoke, Richmond, Newington, and Vienna, VA, and (c) between North Merrick, NY, and Sewaren, NJ, under contract with Shell Oil Co., of Houston, TX. (Hearing site: New York, NY.)

MC 143059 (Sub-55F), filed February 1, 1979. Applicant: MERCER TRANSPORTATION CO., a corporation, P.O. Box 35610, Louisville, KY 40232. Representative: J. L. Stone (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber*, between

the facilities of Sanders Lumber Products Co., at Meridian, MS, on the one hand, and, on the other, points in FL, MI, MS, OH, and WI, restricted to the transportation of traffic originating at or destined to Meridian, MS. (Hearing site: Louisville, KY, or Washington, DC.)

MC 143088 (Sub-4F), filed January 22, 1979. Applicant: ROBERT TARBOX, d.b.a. TARBOX TRUCKING, Johnson Heights, Blossburg, PA 16912. Representative: S. Berne Smith, P.O. Box 1166, (100 Pine Street), Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *animal and poultry feed and feed ingredients* (except liquid commodities in bulk), from points in IL, IN, IA, KY, MD, MI, MN, OH, and WI, to points in DE, CT, MD, NJ, NY, PA, and VT; and (2) *Fertilizer and fertilizer ingredients* (except liquid commodities in bulk), from points in MD and OH to points in NY and PA. (Hearing site: Syracuse, NY, or Harrisburg, PA.)

MC 143607 (Sub-5F), filed February 13, 1978. Applicant: BAYWOOD TRANSPORT, INC., a Delaware corporation, P.O. Box 2611, Waco, TX 76710. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, DC 20001. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *textiles and textile products*, from points in AL, GA, NC, and SC, to points in CA, under contract with Avondale Mills, of Sylacauga, AL. (Hearing site: Birmingham, AL.)

MC 143775 (Sub-59F), filed January 18, 1979. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85301. Representative: Michael R. Burke, (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *adhesives, sealants, solvents, stains, and wood preservatives*, and (2) *materials, equipment, and supplies* used in the installation, maintenance, and distribution of floors and floor coverings, and walls and wall coverings, in vehicles equipped with mechanical refrigeration, from the facilities of Roberts Consolidated Industries, in Los Angeles County, CA, to points in the United States (except AK, CA, and HI). (Hearing site: Los Angeles, CA, or Washington, DC.)

NOTE.—Dual operations may be involved.

MC 143794 (Sub-10F), filed December 4, 1978. Applicant: EAST-WEST MOTOR FREIGHT, INC., a Georgia corporation, P.O. Box 525, Selmer, TN

38375. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, NE, Atlanta, GA 30326. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *central heating and air conditioning units, furnaces, air coolers, water evaporators, condensing units, and compressors*, and (2) *parts, equipment, and supplies* used in the manufacture and installation of the commodities in (1) above, from the facilities of Heil-Quaker Corp., in Davidson County, TN, to points in the United States (except AK, HI, CA, MT, UT, and WA, under contract with Heil-Quaker Corp. of Nashville, TN. (Hearing site: Nashville, TN, or Washington, DC.)

MC 144565 (Sub-3F), filed January 29, 1979. Applicant: MERLIN CLARK, d.b.a. CLARK TRANSPORTATION & ENTERPRISES, 9421 S. Hydraulic, Wichita, KS 67233. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *distilled spirits, wine, cordials, and malt beverages*, from Lawrenceburg, IN, to the facilities of A-B Sales, Inc., at or near Wichita and Hutchinson, KS. (Hearing site: Kansas City, MO.)

MC 144598 (Sub-1F), filed January 3, 1979. Applicant: C & J TRANSPORT, INC., P.O. Box 42, North Vassalboro, ME 04962. Representative: Chester A. Zyblut, 368 Executive Bldg., 1030 Fifteenth Street, NW, Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, from Winterport, ME, to points in CT, DE, KY, ME, MD, MA, NH, NJ, NY, PA, RI, TN, VA, VT, WV, and DC. (Hearing site: Portland or Bangor, ME.)

MC 145108 (Sub-3F), filed January 29, 1979. Applicant: BULLET EXPRESS, INC., 919 Third Avenue, New York, NY 10022. Representative: Jacob P. Billig, 2033 K Street, NW, Washington, DC 20006. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *drugs, toilet preparations, and cosmetics*, (1) from Clinton, CT, to Atlanta, GA, Houston, TX, and Los Angeles, CA, and (2) from Huntsville, AL, to Los Angeles, CA, under contract in (1) and (2) above with Chesebrough-Pond's, Inc., of Greenwich, CT. (Hearing site: Washington, DC.)

MC 145678 (Sub-2F), filed February 2, 1979. Applicant: BOYD WAYNE ANDERSON, d.b.a. SHORT ROUND TRUCKING, 6637 South 95 West #72, Murray, UT 84107. Representative:

Boyd Wayne Anderson (same address as applicant). To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cheese*, from points in IA, MN, and WI, to the facilities of Mountain Farms, Inc., at or near Hyde Park, UT, under contract with Mountain Farms, Inc., of Hyde Park, UT. (Hearing site: Salt Lake City, UT.)

MC 145738 (Sub-3F), filed November 17, 1978, previously published in the FEDERAL REGISTER issue of January 4, 1979 as MC 145759. Applicant: EAST-WEST MOTOR FREIGHT, INC., P.O. Box 525, Selmer, TN 38375. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S., 3390 Peachtree Rd. NE, Atlanta, GA 30326. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *industrial chemicals and industrial cleaning compounds*, (except commodities in bulk), from points in DE, FL, GA, IN, LA, MD, MA, MI, MO, NJ, PA, TX, and VA, to points in AZ, CA, and NV. (Hearing site: Los Angeles, CA)

NOTE.—Dual operations may be involved in this proceeding. This republication shows the correct docket number assigned to this proceeding as MC 145738 Sub-3F.

MC 145788 (Sub-2F), filed January 15, 1979. Applicant: RAYMOND C. THEDE, d.b.a. THEDE TRUCKING, R.R. #2, Box 56, Jefferson, IA 50129. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *soybean meal*, (except in bulk, in tank vehicles), from the facilities of West Central Coop, at or near Ralston, IA, to points in IN. (Hearing site: Des Moines, IA, or Kansas City, MO.)

MC 145808 (Sub-2F), filed January 19, 1979. Applicant: RED ARROW DELIVERY SERVICE CO., INC., Metropolitan Airport, Air Cargo Bldg., Nashville, TN 37217. Representative: Rudy Yessin, 314 Wilkinson Street, Frankfort, KY 40601. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment), (1) between Metropolitan Airport, at Nashville, TN, on the one hand, and, on the other, Greater Cincinnati Airport, at Erlanger, KY, John F. Kennedy International Airport, at New York, NY, McGhee Tyson Airport, at Knoxville, TN, Lovell Field, at Chattanooga, TN, and O'Hare International Airport, at Chicago, IL, and (2) between Metropolitan Airport, at Nashville, TN, At-

lanta International Airport, at Atlanta, GA, Memphis International Airport, at Memphis, TN, Standiford Field, at Louisville, KY, Decatur, AL, points in Bedford, Benton, Cannon, Carroll, Cheatham, Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Franklin, Gibson, Giles, Henderson, Henry, Hickman, Houston, Humphries, Jackson, Lawrence, Lewis, Lincoln, Macon, Madison, Marshall, Maury, Montgomery, Moore, Perry, Putnam, Robertson, Rutherford, Smith, Stewart, Sumner, Trousdale, Warren, Wayne, Weakley, White, Williamson, and Wilson Counties, TN, points in Allen, Barren, Butler, Calloway, Christian, Edmondson, Graves, Logan, Marshall, Simpson, Todd, Trigg, and Warren Counties, KY, and points in Jackson, Madison, Lauderdale, and Limestone Counties, AL, restricted in (1) and (2) above to the transportation of traffic having a prior or subsequent movement by air. (Hearing site: Nashville, TN.)

MC 145858 (Sub-2F), filed January 29, 1979. Applicant: B & G SUPPLY COMPANY, INC., P.O. Box 748, Albertville, AL 35950. Representative: Donald B. Sweeney, Jr., 603 Frank Nelson Bldg., Birmingham, AL 35203. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *rubber and rubber products*, from Guntersville, AL, to points in AZ, CO, CA, ID, KS, MT, NE, NV, NM, OR, UT, WA, and WY. (Hearing site: Birmingham, AL, or Atlanta, GA.)

MC 145895 (Sub-1F), filed January 26, 1979. Applicant: STATE TRANSPORTATION, INC., Route #1 Bypass, P.O. Box 1349, Portsmouth, NH 03801. Representative: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *malt beverages*, in containers, from South Volney, NY, to points in ME, under contracts with Haffenreffer Beverage Co., Inc., of Brewer, ME, Pine State Tobacco and Candy Co., of Augusta, ME, Nappi Distributions, of Portland, ME, and York Bottling Co., Inc., of Biddeford, ME. (Hearing site: Portland ME, or Boston, MA.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343 formerly Section 5(2) of the Interstate Commerce Act or submit an affidavit indicating why such approval is unnecessary.

MC 145996F, filed December 27, 1978. Applicant: STERLING FREIGHT LINES, INC., 1273 Deeds Ave., Dayton, OH 45404. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. To operate as a

contract carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *automotive heaters, automotive air conditioners, compressors, and pumps*, (2) *parts for the commodities in (1) above*, and (3) *materials, equipment and supplies used in the manufacture of the commodities in (1) and (2) above*, (except commodities in bulk), between Dayton, OH, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, and LA, under continuing contract with Chrysler Corp., of Highland Park, MI. (Hearing site: Columbus, OH, or Washington, DC.)

MC 146016F, filed December 26, 1978. Applicant: OLIVER BROWN TRUCKING CO., INC., Raritan Center Bldg. 529, Edison, NJ 08817. Representative: Eugene M. Malkin, Suite 6193, 5 World Trade Center, New York, NY 10048. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such equipment as is used by wholesale and retail food business houses*, (except commodities which because of size or weight require the use of special equipment), between New York, NY and points in NJ (except those points in NJ in the New York, NY commercial zone), on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: New York, NY.)

NOTE.—Dual operations may be involved in this proceeding.

MC 146068 (Sub-2F), filed January 19, 1979. Applicant: CONSOLIDATED CARRIERS CORPORATION, 2119 N. Davidson Road, Charlotte, NC 28205. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, NW, Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *chemicals* (except in bulk), from points in CA, FL, IL, IN, MA, MI, NH, NJ, NY, OH, TN, TX, WV, and WY, to the facilities of Ace Chemical Corporation, at or near Charlotte, NC. (Hearing site: Charlotte, NC.)

NOTE.—Dual operations are involved in this proceeding.

MC 146068 (Sub-3F), filed December 22, 1978. Applicant: CONSOLIDATED CARRIERS CORPORATION, 2119 N. Davidson Road, Charlotte, NC 28205. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, NW, Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *aluminum billets*, from Harrisonburg, VA, to points in CA. (Hearing site: San Francisco, CA.)

NOTE.—Dual operations are involved in this proceeding.

MC 146148 (Sub-1F), filed January 29, 1979. Applicant: B-RIGHT TRUCKING CO., A Corporation, 492 Old State Route 7, Pottery Addition, Steubenville, OH 43952. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, between the facilities of Innovative Industries, Inc., at or near New Cumberland, WV, on the one hand, and, on the other, points in IL, IN, KY, MI, OH, PA, and VA. (Hearing site: Columbus, OH.)

MC 146165F, filed January 15, 1978. Applicant: BEN'S TRANSPORTATION, INC., Furnace Hill, Chesire, MA 01225. Representative: David M. Marshall, 101 State Street—Suite 304, Springfield, MA 01103. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *alum, aluminum sulfate, rosin sizing, sodium aluminate, and sulfuric acid*, in bulk, between Adams, Boston, and Salem, MA, Parlin and Elizabeth, NJ, North Claymont, DE, and Baltimore, MD, on the one hand, and, on the other, points in WI, IL, MI, IN, OH, NH, WV, MD, DE, NJ, PA, NY, CT, RI, MA, VT, and ME. (Hearing site: Albany, NY, or Boston, MA.)

MC 146228F, filed January 18, 1979. Applicant: WHITING PUBLIC WAREHOUSES, INC., 9450 Buffalo, Hamtramck, MI 48212. Representative: Richard C. March, 1600 First Federal Bldg., Detroit, MI 48226. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from the facilities of Whiting Public Warehouses, Inc., at or near Hamtramck and Detroit, MI, to points in OH and IN. (Hearing site: Detroit or Lansing, MI.)

CONDITION.—Applicant shall conduct separately its for-hire carriage and other business operations. It shall maintain separate accounts and records for each operation. And it shall not transport property as both a private and for-hire carrier in the same vehicle at the same time.

MC 146238F, filed January 25, 1979. Applicant: CECIL GROVES & ROGER D. MONTGOMERY, d.b.a. C & R TRUCKING, A Copartnership, P.O. Box 815, Kingman, AZ 86402. Representative: Earl H. Carroll, 363 North First Avenue, Phoenix, AZ 85003. To operate as a *common carrier*,

by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *grinding balls and shredded tin*, between points in Mohave County, AZ, restricted to the transportation of traffic having a prior movement by rail. (Hearing site: Phoenix, AZ.)

MC 130550F, filed January 25, 1979. Applicant: AMERICAN AUTOMOBILE ASSOCIATION, INC., d.b.a. AAA WORLD WIDE TRAVEL AGENCY, 8111 Gatehouse Rd., Falls Church, VA 22042. Representative: Charles H. Carpenter (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at Falls Church, VA, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in special and charter operations, between points in the United States. (Hearing site: Washington, D.C.)

NOTE.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauk Tours, Inc., Extension—New York, NY*, 54 M.C.C. 291 (1952).

BROKER

MC 12858 (Sub-2F), filed January 22, 1979. Applicant: SUTTON'S TOURS AND TRAVEL SERVICE, INC., 133 Boardman-Poland Road, Boardman, OH 44512. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. To engage in operations, in interstate or foreign commerce, as a *broker*, at Stockton, CA, Sarasota, FL, Oak Park, IL, Topeka, KS, Boardman and Struthers, OH, Monroeville, PA, Rochester, NY, Spokane, WA, and Milwaukee, WI, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in the same vehicle with passengers, in round-trip special and charter operations, between points in the United States (including AK and HI). (Hearing site: Columbus, OH.)

NOTE.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauk Tours, Inc., Extension—New York, NY*, 54 M.C.C. 291 (1952).

MC 110325 (Sub-93F), filed January 29, 1979. Applicant: TRANSCON LINES, a corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Building, 1221 Baltimore Avenue, Kansas City, MO 64105. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1)

between Charleston, WV, and St. Louis, MO, (a) over Interstate Hwy 64, and (b) from Charleston over U.S. Hwy 60 to junction U.S. Hwy 52, then over U.S. Hwy 52 to junction U.S. Hwy 50, then over U.S. Hwy 50 to junction U.S. Hwy 40, then over U.S. Hwy 40 to St. Louis, and return over the same route, (2) between Owensboro and Bowling Green, KY, over U.S. Hwy 231, (3) between Owensboro and junction Green River Parkway and U.S. Hwy 231, over Green River Parkway, (4) between Mayfield and London, KY, over KY Hwy 80, (5) between London, KY, and Cincinnati, OH, (a) over U.S. Hwy 25, and (b) over Interstate Hwy 75, (6) between Somerset and Lexington, KY, from Somerset over U.S. Hwy 27 to junction U.S. Hwy 150, then over U.S. Hwy 150 to junction U.S. Hwy 127, then over U.S. Hwy 127 to junction U.S. Hwy 68, then over U.S. Hwy 68 to Lexington, and return over the same route, (7) between Harrodsburg, KY and junction U.S. Hwy 127 and Interstate Hwy 64, over U.S. Hwy 127, (8) between junction U.S. Hwys 25 and 42 and Bowling Green, KY, from junction U.S. Hwys 25 and 42 over U.S. Hwy 42 to junction U.S. Hwy 31W, then over U.S. Hwy 31W to Bowling Green, and return over the same route, (9) between junction U.S. Hwys 42 and 31E and Glasgow, KY, over U.S. Hwy 31E, (10) between junction Interstate Hwys 71 and 75 and junction Interstate Hwy 65 and KY Hwy 80, from the junction of Interstate Hwys 71 and 75 over Interstate Hwy 71 to junction Interstate Hwy 65, then over Interstate Hwy 65 to junction Interstate Hwy 65 and KY Hwy 80, and return over the same route, (11) between Indianapolis, IN, and Hopkinsville, KY, from Indianapolis, over U.S. Hwy 40 to junction U.S. Hwy 41, then over U.S. Hwy 41 to junction U.S. Hwy Alt. 41, at or near Madisonville, KY, then over U.S. Hwy Alt. 41 to junction U.S. Hwy 41, at or near Nortonville, then over U.S. Hwy 41 to Hopkinsville, and return over the same route, (12) between Indianapolis and junction Interstate Hwy 40 and U.S. Hwy 41, over

Interstate Hwy 70, (13) between Henderson and Hopkinsville, KY, from Henderson over Pennyryle Parkway to junction U.S. Hwy 41, then over U.S. Hwy 41 to junction Pennyryle Parkway, then over Pennyryle Parkway to Hopkinsville, and return over the same route, (14) between Stanford and Mt. Vernon, KY, over U.S. Hwy 150, (15) between Edmonton and Harrodsburg, KY, over U.S. Hwy 68, (16) between Indianapolis, IN, and Louisville, KY, (a) over U.S. Hwy 31, and (b) over Interstate Hwy 65, (17) between Owensboro, KY, and Indianapolis, IN, from Owensboro over U.S. Hwy 231 to junction IN Hwy 54, then over IN Hwy 54 to junction IN Hwy 445, then over IN Hwy 445 to junction IN Hwy 45, then over IN Hwy 45 to junction IN Hwy 37, then over IN Hwy 37 to Indianapolis, and return over the same route, (18) between Nashville, TN, and Bowling Green, KY, (a) over U.S. Hwy 31W, and (b) over Interstate Hwy 65, (19) between Nashville, TN, and Hopkinsville, KY, (a) over U.S. Hwy 41, and (b) over U.S. Hwy Alt. 41, (20) between Lexington, KY, and Memphis, TN, from Lexington over U.S. Hwy 62 to junction U.S. Hwy 51, then over U.S. Hwy 51 to Memphis, and return over the same route, (21) between junction U.S. Hwy 60 and Blue Grass Parkway and junction Purchase Parkway and U.S. Hwy 51, from junction U.S. Hwy 60 and Blue Grass Parkway over Blue Grass Parkway to junction Interstate Hwy 65, then over Interstate Hwy 65 to junction Western Kentucky Parkway, then over Western Kentucky Parkway to junction Purchase Parkway, then over Purchase Parkway to junction U.S. Hwy 51, and return over the same route, (22) between junction U.S. Hwy 60 and U.S. Hwy 62 and junction U.S. Hwy 45 and U.S. Hwy 51, from junction U.S. Hwy 60 and U.S. Hwy 62 over U.S. Hwy 62 to junction U.S. Hwy 45, then over U.S. Hwy 45 to junction U.S. Hwy 51, and return over the same route, (23) between junction KY Hwy 80 and Interstate Hwy 65 and Somerset, KY, from junction KY Hwy 80 and Interstate Hwy 65 over Inter-

state Hwy 65 to junction Cumberland Parkway, then over Cumberland Parkway to Somerset, and return over the same route, (24) between junction U.S. Hwy 150 and U.S. Hwy 27 and Lexington, KY, over U.S. Hwy 27, (25) between junction U.S. Hwy 50 and IN Hwy 37 and junction IN Hwy 37 and IN Hwy 45, over IN Hwy 37, (26) between junction U.S. Hwy 60 and U.S. Hwy 52 and junction U.S. Hwy 60 and U.S. Hwy 62, over U.S. Hwy 60 serving in (1) through (26) above, all intermediate points, and the off-route points of Jefferson, Fayette, Boyd, Daviess, Marshall, Warren, McCracken, Clark, Hardin, Franklin, Boone, Graves, Nelson, Taylor, Kenton, Oldham, Bullitt, Scott, Woodford, Jessamine, Bourbon, Campbell, Greenup, Larue, and Henderson Counties, KY, Ripley and New Bern, TN, and Mount Vernon, IL. (Hearing site: Lexington and Louisville, KY, Memphis, TN, and St. Louis, MO.)

MC 146168F, filed January 20, 1979. Applicant: PONCHATOULA LEAD CO., INC., Route 1, Box 66, Ponchatoula, LA 70454. Representative: Harold R. Ainsworth, 2307 American Bank Building, New Orleans, LA 70130. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *antimonial lead*, from the facilities of Schuylkill Metals Corporation, in East Baton Rouge Parish, LA, to points in AR, FL, GA, IL, IN, KY, LA, MS, MO, TN, and TX; and (2) *scrap batteries and scrap lead plates*, from points in AR, FL, GA, IL, IN, KY, LA, MS, MO, TN, and TX, to the facilities of (a) Schuylkill Metals Corporation, in East Baton Rouge Parish, LA, and (b) Ponchatoula Battery Co., Inc., in Tangipahoa Parish, LA, under contracts in (1) and (2) above with Schuylkill Metals Corporation, of Dover, DE, and Ponchatoula Battery Co., Inc., of Ponchatoula, LA. (Hearing site: New Orleans, LA.)

[FR Doc. 79-8242 Filed 3-19-79; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Civil Aeronautics Board.....	1, 2, 3
Federal Communications Commission.....	4
Federal Election Commission.....	5
Federal Reserve System Board of Governors.....	6
International Trade Commission.....	7
Metric Board.....	8
Nuclear Regulatory Commission.....	9
Postal Rate Commission.....	10
Railroad Retirement Board.....	11
Securities and Exchange Commission.....	12, 13

[6320-01-M]

1

[M-203, Amdt. 2; Mar. 13, 1979]

CIVIL AERONAUTICS BOARD.

Addition of item to the March 15, 1979 meeting agenda.

TIME AND DATE: 10 a.m., March 15, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

26b. Revised transatlantic fares proposed by various carriers. The proposals include increases in most normal and promotional fares (BPDA, BIA.)

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION:

This memo was not submitted earlier due to the variety and timing of the carriers' proposals, each of which necessitated alterations in the comprehensive draft order. The order must be submitted to the President no later than March 15. Accordingly, the following Members have voted that agency business requires the addition of Item 26b to the March 15, 1979 agenda and that no earlier announcement of this addition was possible.

Chairman, Marvin S. Cohen
Member, Richard J. O'Mella
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-550-79 Filed 3-16-79; 2:49 pm]

[6320-01-M]

2

[M-203, Amdt. 3; Mar. 15, 1979]

CIVIL AERONAUTICS BOARD.

Deletion of item from the March 15, 1979 meeting agenda.

TIME AND DATE: 10 a.m., March 15, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

10. Dockets 33115, 33298, 33315, 33524, 33562, 33581, 33671, 33674, 33876, 34019, 34570, and 34067; Applications for various Salt Lake City markets (Memo #8412-C, BPDA, OGC, BLJ).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION:

Item 10 was deleted from the March 15, 1979 agenda in order for the staff to do additional work. Accordingly, the following Members have voted that agency business requires the deletion of Item 10 from the March 15, 1979 agenda and that no earlier announcement of this change was possible:

Chairman, Marvin S. Cohen
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-551-79 Filed 3-16-79; 2:49 pm]

[6320-01-M]

3

[M-203, Amdt. 4; March 15, 1979]

CIVIL AERONAUTICS BOARD.

Closure and additions to the March 15, 1979 meeting agenda.

TIME AND DATE: 9:30 a.m., March 15, 1979.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

A. U.S.-Canada "Seat Sale" fares proposed by Air Canada (BPDA, OGC, BIA, BCP).

B. U.S.-France "Vacances" fares proposed by Air France (Memo 8605, BPDA, BIA).

STATUS: Closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION:

Because of the short time frame in which action must be taken, the following Members have voted that agency business requires that the Board meet on these items less than seven days' notice and no earlier announcement of the meeting was possible:

Chairman, Marvin S. Cohen
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

Member O'Mella was not present.

Public disclosure, particularly to foreign governments of opinions, evaluations, and strategies discussed could seriously compromise the ability of the United States Government to achieve understanding in future rate negotiations which would be in the best interests of the United States. Accordingly, the staff believes that public observation of this meeting would involve matters the premature disclosure of which would be likely to significantly frustrate future action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9) and 14 CFR 310b.5(9)(B).

Chairman, Marvin S. Cohen
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

Member O'Mella was not present.

PERSONS EXPECTED TO ATTEND

Board Members.—Chairman, Marvin S. Cohen; Member, Elizabeth E. Bailey; Member, Gloria Schaffer.

Assistants to Board Members.—Mr. Stephen H. Lachter.

Acting Managing Director.—Mr. Sanford Rederer.

Executive Assistant to Managing Director.—Mr. John R. Hancock.

Bureau of Pricing and Domestic Aviation.—Mr. Michael E. Levine, Ms. Barbara A. Clark, Mr. James L. Deegan, Mr. Herbert P. Aswall, and Mr. Douglas V. Leister.

Bureau of International Aviation.—Mr. Donald A. Farmer, Jr., Mr. Francis S. Murphy, and Mr. David A. Levitt.

Bureau of Consumer Protection.—Mr. Reuben B. Robertson and Ms. Patricia Kennedy.

Office of Economic Analysis.—Mr. Robert Frank and Mr. Richard Klem.

Office of the General Counsel.—Mr. Philip J. Bakes, Jr. and Mr. Peter B. Schwarzkopf.

Office of the Secretary.—Mrs. Phyllis T. Kaylor and Ms. Linda Senese.

GENERAL COUNSEL CERTIFICATION

I certify that this meeting may be closed to the public under 5 U.S.C. 552b(c)(9) and 14 CFR 310b.5(9)(B) and that the meeting may be closed to public observation.

GARY J. EDLES,
Acting General Counsel.

[S-552-79 Filed 3-16-79; 2:49 pm]

[6712-01-M]

4

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 12:45 p.m., Thursday, March 15, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Emergency Closed Commission Meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No., and Subject

Complaints and Compliance—2—Investigation into the operation of Station WJAN (TV), Canton, Ohio.

If additional information is required concerning this emergency closed meeting, it may be obtained from FCC Public Information Office, telephone number 202-632-7260.

Issued: March 16, 1979.

[S-548-79 Filed 3-16-79; 2:05 pm]

[6715-01-M]

5

FEDERAL ELECTION COMMISSION.

"FEDERAL REGISTER" NO. FR-S-541.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 22, 1979 at 10 a.m.

CHANGE IN MEETING: The following matter has been added to the open portion of the above scheduled meeting: Computer contract.

PERSONS TO CONTACT FOR INFORMATION:

Mr. Fred S. Eiland, Public Information Officer, telephone 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-542-79 Filed 3-16-79; 9:31 am]

[6210-01-M]

6

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 11 a.m., Friday, March 23, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of a telephone system, under competitive bidding, for the Federal Reserve Bank of Kansas City.

2. Proposed alternatives for promoting use of the Susan B. Anthony \$1 coin.

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board: 202-452-3204.

Dated: March 15, 1979.

GRIFFITH GARWOOD,
Deputy Secretary
of the Board.

[S-543-79 Filed 3-16-79; 9:31 a.m.]

[7020-02-M]

7

INTERNATIONAL TRADE COMMISSION.

[USITC SE-79-14]

TIME AND DATE: 10 a.m., Tuesday, March 27, 1979.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Doxycycline (Inv. 337-TA-3)—vote.
6. Any items left over from previous agenda.

Portions closed to the public.

7. Status report on Investigation 332-101 (MTN Study), if necessary.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-546-79 filed 3-16-79; 10:46 am]

[3510-13-M]

8

METRIC BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

S-477-79 published at page 13632 in the issue of Monday, March 12, 1979.

CORRECTION: The agenda items for Wednesday, April 4 were incorrectly printed. The correct listing is:

American National Standards Institute Presentation. Report from National Conference on Weights and Measures.

Presentation on Australian Experience in Metric Conversion.

CONTACT PERSON FOR MORE INFORMATION:

Joan Phillips, 703-235-1933.

LOUIS F. POLK,
Chairman,

United States Metric Board.

[S-545-79 Filed 3-16-79 9:31]

[7590-01-M]

9

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Thursday, March 15, 1979 and Thursday, March 22, 1979.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

ADDITIONAL ITEM

THURSDAY, MARCH 15, 2 P.M.

1. Discussion of litigation implications of Commission testimony on recent shutdown orders. (Closed—exemption 10).

NOTE.—Discussion of legislative program was postponed.

THURSDAY, MARCH 22, 9:30 A.M.

1. Briefing on upgrade rule and supporting guidance (approximately 2 hours—open portions may be closed—exemption 1).

THURSDAY, MARCH 22, 2 P.M.

1. Discussion of Staff's final report, "Regulation of Federal Radioactive Waste Activities" (approximately 1 hour—public meeting).

2. Discussion of proposed executive branch format for analyses of export applications (approximately 1 hour—open, portions may be closed—exemption 1) (postponed from Tuesday, March 20).

3. Affirmation session (approximately 10 minutes—public meeting).

a. Amendments to 10 CFR 35.

b. Amendments to 10 CFR 140.

c. Modification of Price-Anderson Act.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE,
Office of the Secretary.

MARCH 15, 1979.

[S-549-79 Filed 3-16-79; 2:05 pm]

[7715-01-M]

10

POSTAL RATE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 13125, March 9, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE CLOSED MEETING: March 14, 1979, 8:30 a.m.

CHANGES IN THE MEETING: Meeting date and time changed to March 20, 1979, 8:30 a.m.

Meeting remains closed pursuant to 5 U.S.C. 552b(c)(2)(6).

CONTACT PERSON FOR MORE INFORMATION:

Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street N.W., Washington, D.C. 20268, telephone 202-254-5614.

[S-544-79 Filed 3-16-79; 9:31 a.m.]

[7905-01-M]

11

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 9:30 a.m., March 22, 1979.

PLACE: Board's meeting room on the 8th floor of its headquarters building at 844 Rush Street, Chicago, Ill., 60611.

STATUS: The entire meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- (1) Appeal from referee's denial of disabled child's annuity, Mary Ann Kelly.
- (2) Appeal from referee's denial of establishment of a "disability freeze" period, James E. Moore.

CONTACT PERSON FOR MORE INFORMATION:

R. F. Butler, Secretary of the Board, COM No. 312-751-4920, FTS No. 387-4920.

[S-547-79 Filed 3-16-79; 11:04 am]

[8010-01-M]

12

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 11892, March 2, 1979.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: March 5, 1979.

CHANGES IN MEETING: Deletion; rescheduling; additional items.

The following item scheduled was not considered at the closed meeting on Tuesday, March 13, 1979, at 9 a.m.:

Institution of injunctive action and administrative proceedings.

The following items scheduled for consideration at a closed meeting on Wednesday, March 14, 1979, immediately following the open meeting at 10 a.m. have been rescheduled for Wednesday, March 28, 1979:

Reports of Investigation.
Regulatory matter bearing enforcement implications.

The following additional items will be considered at a closed meeting scheduled for Wednesday, March 14, 1979, immediately following the open meeting at 10 a.m.

Settlement of administrative proceedings of an enforcement nature.

Access to investigative files by Federal, State, or Self-Regulatory Authorities.

Chairman Williams and Commissioners Loomis, Evans, Pollack and Karmel determined that Commission business required the above changes and that no earlier notice thereof was possible.

MARCH 14, 1979.

[S-553-79 Filed 3-16-79; 3:29 pm]

[8010-01-M]

13

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 19, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, March 20, 1979, at 10 a.m. and on Thursday, March 22, 1979, immediately following the 10 a.m. open meeting. An open meeting will be held on Thursday, March 22, 1979 at 10 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C.

552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(8)(9)(i) and (10).

Commissioners Loomis, Evans, Pollack and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meetings scheduled for Tuesday, March 20, 1979, will be:

Litigation matters.
Access to investigative files by Federal, State, or Self-Regulatory Authorities.
Settlement of administrative proceedings of an enforcement nature.
Formal order of investigation.
Institution of administrative proceedings of an enforcement nature.
Institution and settlement of administrative proceedings of an enforcement nature.
Institution and settlement of administrative proceedings of an enforcement nature and settlement of injunctive action.
Freedom of Information Act appeals.
Chapter X proceeding.

The subject matter of the closed meeting scheduled for Thursday, March 22, 1979, immediately following the open meeting at 10 a.m., will be:

Opinions.

The subject matter of the open meeting scheduled for Thursday, March 22, 1979, at 10 a.m., will be:

1. Consideration of an order which would make permanent a temporary exemption from the provisions of Section 9(a) of the Investment Company Act granted in July, 1978 (see Investment Company Act Release No. 10318) to John Nuveen & Co., Inc. and Peter A. Leonard. For further information, please contact G. Sundick at (202) 755-1250 or H. Schiffman at (202) 755-1788.

2. Consideration of a proposal to adopt technical amendments to Investment Company Act Rule 24f-2 Notice requirements; effective April 21, 1979. For further information, please contact Steven M. Felsenstein at (202) 376-8049.

3. Consideration of the Freedom of Information Act Appeal of Joseph P. Averill from a decision of the Commission's Freedom of Information Act Officer denying access to certain Commission correspondence files relating to Castlewood International Corporation on the basis of Exemption 5 of the Freedom on Information Act, 5 U.S.C. 552(b)(5) (inter or intra-agency memoranda or letters). For further information, please contact William Dietch at (202) 755-1342.

4. Approval of an action taken by the duty officer to issue an order correcting typographical errors in its Findings and Opinion in the matter of Eastern Utilities Associates voluntary plan of reorganization filed pursuant to § 11(e) of the Public Utility Holding Company Act of 1935 (HCA No. 20931). For further information, please contact Grant G. Guthrie at (202) 523-5156.

FOR FURTHER INFORMATION, CONTACT:

Michael Rogan at (202) 755-1638.

MARCH 14, 1979.

[S-554-79 Filed 3-16-79; 3:29 pm]

Legislation
Digest
Federal

**TUESDAY, MARCH 20, 1979
PART II**



**DEPARTMENT OF
STATE**



**FISHERY
CONSERVATION
AND MANAGEMENT
ACT OF 1976**

**Applications for Permits to Fish Off
the Coasts of the United States**

DEPARTMENT OF
STATE

FISHERY
CONSERVATION
AND MANAGEMENT
ACT OF 1976

Application for Permit to Fish Off
the Coast of the United States

[4710-09-M]

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 653]

FISHERY CONSERVATION AND MANAGEMENT
ACT OF 1976Applications for Permits To Fish Off the Coasts
of the United States

The Fishery Conservation and Management Act of 1976 (P.L. 94-265) as amended (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to Section 204 of the Act.

The Act also requires that a notice of receipt of all applications for such permits, a summary of the contents of such applications, and the names of the Regional Fishery Management Councils that receive copies of these applications, be published in the FEDERAL REGISTER.

Individual vessel applications for fishing 1979 have been received from Japan, Korea and the Polish People's Republic and are summarized herein.

If additional information regarding any applications is desired, it may be obtained from: Permits and Regulations Division (F37), National Marine

Fisheries Service, Department of Commerce, Washington, D.C. 20235, telephone (202) 634-7265.

Dated: March 9, 1979.

BRIAN S. HALLMAN,
Acting Director,
Office of Fisheries Affairs.

Fishery codes and designation of regional councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional Council
ABS	Atlantic Billfishes and Sharks.	New England Mid-Atlantic South Atlantic Gulf of Mexico Caribbean
BSA	Bering Sea and Aleutian Islands Trawl, Longline and Herring Gillnet.	North Pacific
CRB	Crab (Bering Sea).....	North Pacific
GOA	Gulf of Alaska.....	North Pacific
NWA	Northwest Atlantic.....	New England Mid-Atlantic
SMT	Seamount Groundfish (Pacific Ocean).	Western Pacific
SNL	Snails (Bering Sea).....	North Pacific
WOC	Washington, Oregon, California Trawl.	Pacific

Activity codes specify categories of fishing operations applied for as follows:

Activity Code and Fishing Operations

- 1—Catching, processing, and other support.
- 2—Processing and other support only.
- 3—Other support only.

Nation/vessel name/vessel type	Application No.	Fishery	Activity
Korea:			
Dongwon No. 31, longliner.....	KS-79-0053.....	BSA, GOA.....	1
Japan:			
Nittoh Maru, longliner.....	JA-79-0842.....	SNA.....	1
Mishima Maru, cargo/transport.....	JA-79-1023.....	BSA, GOA, NWA.....	3
Yuyo Maru, cargo/transport.....	JA-79-1033.....	BSA, CRB, GOA, NWA, SMT, SNA.	3
Nipponham Maru No. 1, cargo/transport.....	JA-79-1082.....	BSA, CRB, GOA, NWA, SMT, SNA.	3
Seki Rez, cargo/transport.....	JA-79-1148.....	BSA, GOA, GOA, NWA, SMT, SNA.	3
Tama Rez, cargo/transport.....	JA-79-1149.....	BSA, CRB, GOA, NWA, SMT, SNA.	3
Junko Maru No. 3, longliner.....	JA-79-1320.....	ABS.....	1
Poland:			
Goplo, large side trawler.....	PL-79-0057.....	NWA.....	1
Murena, large stern trawler.....	PL-79-0058.....	NWA.....	1
Wigry, large side trawler.....	PL-79-0059.....	NWA.....	1
Awior, large stern trawler.....	PL-79-0060.....	GOA, NWA, WOC.....	1

[FR Doc. 79-8090 Filed 3-19-79; 8:45 am]

100

TUESDAY, MARCH 20, 1979
PART III



**DEPARTMENT OF
HEALTH,
EDUCATION,
AND WELFARE**

**Food and Drug
Administration**



**CHEMICAL COMPOUNDS
IN FOOD-PRODUCING
ANIMALS**

**Criteria and Procedures for
Evaluating Assays
for Carcinogenic Residues**

**Food and Drug
Administration
Department of
Health, Education,
and Welfare**

[4110-03-M]

**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE**

Food and Drug Administration

[21 CFR Parts 70, 500, 514, 571]

[Docket No. 77N-0026]

**CHEMICAL COMPOUNDS IN FOOD-
PRODUCING ANIMALS**Criteria and Procedures for Evaluating Assays
for Carcinogenic Residues

AGENCY: Food and Drug Administration.

ACTION: Proposal.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish procedures and minimum criteria to ensure the absence of cancer-causing residues in edible products of food-producing animals to which drugs, food additives, or color additives have been administered. This is a reproposal of regulations revoked in accordance with a court order.

DATES: Comments by July 18, 1979; Notices of participation for the public hearing by May 4, 1979. Public hearing before the Commissioner June 4, 1979.

ADDRESSES: Comments and notices of participation are to be submitted to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

**FOR INFORMATION ON THIS
PROPOSAL, CONTACT:**

Robert J. Condon, Bureau of Veterinary Medicine (HFV-105), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1580.

**FOR FURTHER INFORMATION ON
THE HEARING BEFORE THE COM-
MISSIONER CONTACT:**

Constantine Zervos, Director, Scientific Liaison and Intelligence Staff (HFY-31), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4490.

SUPPLEMENTARY INFORMATION: These proposed regulations would provide an operational definition of the no-residue requirement of the so-called "DES proviso" to the anticancer clauses, sections 409(c)(3)(A), 512(d)(1)(H), and 706(b)(5)(B), of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)(A), 360(d)(1)(H), and 376(b)(5)(B)). The regulations also propose to establish criteria for accepting assays and procedures for establishing suitable postadministration

withdrawal periods to prevent the occurrence of carcinogenic residues in edible animal products.

Prior to July 19, 1973, FDA had applied the DES proviso on a case-by-case basis, without published criteria. However, the Commissioner of Food and Drugs concluded that it was appropriate to establish criteria and procedures for their application through rulemaking to permit public discussion of the scientific, legal, and policy issues involved. Accordingly, the Commissioner proposed a set of regulations, in the FEDERAL REGISTER of July 19, 1973 (38 FR 19226), and afforded 60 days for public comment.

The numerous comments received were submitted by scientists affiliated with consumer groups, universities, scientific societies, State and Federal agencies, trade associations, and affected manufacturers; some were from nonaffiliated individuals. Many comments revealed a sharp divergence of opinion concerning FDA's interpretation of the proviso to the anticancer clauses of the act.

The Commissioner promulgated the final regulations in the FEDERAL REGISTER of February 22, 1977 (42 FR 10412), but solicited comments on four specific issues: (1) The acceptable level of risk, (2) comparative metabolism, (3) regulation of endogenous compounds, and (4) methods of determining an assay's lowest limit of reliable measurement. On March 23 and 24, 1977, the Animal Health Institute (AHI) and three other groups petitioned the Commissioner to stay the effective date of the regulations and to then revoke them. The Commissioner denied these petitions on April 27. In response to a separate request by AHI, however, the Commissioner extended the comment period to July 25, 1977 (42 FR 24254).

On May 12, AHI filed a complaint in the United States District Court for the District of Columbia alleging that the regulations were unlawful: (1) because they broadened the scope of the Delaney, i.e., anticancer, clause of the act to include substance that have not been determined to be carcinogenic, and (2) because they foreclosed marketing of a compound unless there exists an assay of sufficient "sensitivity" to detect residues of the compound at "theoretically" safe levels determined by the regulations. Also, AHI alleged that the regulations were impractical and embodied novel on highly suspect technical principles that would impose enormous financial and environmental costs on the animal health industry. Finally, it alleged that the final regulations violated the Administrative Procedure Act (5 U.S.C. 551 note) because they departed from and radically changed the

proposed regulations and were not republished for comment.

Based on AHI's affidavits contending that the statistical procedure for extrapolation of animal data adopted in the final order was significantly different from and more complex than that proposed, and perhaps improperly interpreted, the court remanded the case to the agency for further consideration. The court also required the agency to assess the question raised by AHI about the technical feasibility of the regulations, and it suggested that the Commissioner repropose the regulations (*Animal Health Institute v. Food and Drug Administration*, Civil No. 77-806 (D.D.C. Feb. 8, 1978)). In accordance with the court's order, the Commissioner revoked the regulations on May 26, 1978 (43 FR 22675) and is now reproposing all the regulations for public comment. In this proposal, the Commissioner has evaluated and responded to AHI's allegations, the court's questions, the citizen petitions to revoke the regulations, and all comments filed on the final order. (For the sake of clarity, the final order is hereafter designated the "February notice" or the "1977 notice".)

Since the July 1973 proposal, the Commissioner has used the risk assessment element of the regulations as the prototype for segments of the agency's anticancer policy. Before attempting to build a uniform procedure for regulating all chemicals in the food supply, the Commissioner has adopted where appropriate, the best elements of the emerging scientific and regulatory procedures of risk assessment, metabolism studies, in vitro mutagenesis tests, etc., for regulating residues in food derived from food-producing animals.

The Commissioner selected this class of compounds as the test model because FDA has premarket approval authority over the chemicals intentionally used in these animals, and the DES proviso to the Delaney clause has made regulation of these compounds one of the agency's most difficult tasks.

Based on experience with the principles outlined in the proposal, gained through several years of regulating these chemicals on a case-by-case basis, the Commissioner believes that they have potential applicability for regulating all compounds covered by the act. Moreover, due to the extensive interest in the issues, the Commissioner now believes that the time is ripe for formulating a comprehensive approach for regulating all chemical carcinogens. Expanding the use of the principles set out in these regulations into other areas regulated by the agency seems desirable from the perspectives of science and public health protection, but the results of their ex-

panded use, e.g., cost, cannot now be calculated.

Because an error in selecting the basic principles could lead to a future tragedy, the principles adopted at this time must be reasonable and must not underestimate the potential risks associated with the use of chemicals. Accordingly, the Commissioner is proposing to adopt principles that some may consider too "conservative." The term "conservative," however, is relative. Further, although the principles form an integrated scheme of regulation, individual segments can be severed and replaced.

For all the foregoing reasons, the Commissioner has determined that, in addition to the 120-day comment period for filing written comments, an informal public hearing should be held in accordance with Part 15 (21 CFR Part 15). The informal public hearing will provide an open forum for the presentation of information, views, and discussions on all aspects of the proposal. Because the general principles articulated in the regulations have widespread potential use, the Commissioner asks that the witnesses focus on the principles that form the basis of the regulations, in addition to the issue of the technical feasibility of the required analytical technology. In particular, the Commissioner requests discussion of the following:

1. Threshold assessment procedures.
2. Criteria for selecting residues for chronic toxicity testing.
3. The types of investigations necessary to study how chemicals are metabolized, and the role of these studies in assessing the parent compound's safety.
4. The use of comparative metabolism studies for selecting the laboratory animal species to be used as surrogates for man in chronic toxicity testing.
5. The utility of short-term in vitro mutagenesis tests in assessing the safety of a compound.
6. Mathematical risk estimation procedures, including (a) methods of assessing risks within a species and (b) methods of cross-species extrapolation.
7. Procedures for combining data from the same or different carcinogenesis bioassays.
8. The regulation of endogenous substances.
9. The acceptable level of risk.

In preparing final regulations, the Commissioner will consider the administrative record of this hearing along with all other written comments received during the comment period specified in this proposal and on the transcript of the Part 15 hearing.

The hearing will be held on June 4, 1979, starting at 9 a.m. in the Wash-

ington, DC area at a place to be announced later.

A written notice of participation must be filed in accordance with § 12.45 (21 CFR 12.45) with the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, not later than May 4, 1979. The envelope containing the notice of participation, and the notice of participation itself, should be prominently marked "SOM Hearing." The notice of participation must also contain Hearing Clerk Docket No. 77N-0026, the name, address, and telephone number of the person desiring to make a statement, along with any business affiliation, the text of the presentation, and the approximate length of time requested for the presentation. The Commissioner is requiring submission of the text of all presentations before the hearing to promote a comprehensive discussion of the issues, but the Commissioner recognizes that some revisions in the text before the hearing may be necessary. A schedule for the hearing will be mailed to each person who files a notice of participation; the schedule will also be available from the FDA Hearing Clerk. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations.

If the responses to this notice of hearing are so numerous that insufficient time is available to accommodate the full amount of time requested in the notices of participation received, the Commissioner will allocate the available time among the persons making the oral presentation to be used as they wish. Final versions of written statements (preferably four copies) should be presented to the presiding officer on the day of the hearing or submitted to the Hearing Clerk by June 19, 1979 for inclusion in the administrative record.

The plenary hearing will be open to the public, and any interested person who has filed a written notice of participation may be heard concerning matters raised in the written statement which are relevant to the issues under consideration.

Additional comments from interested persons may be submitted during the period following the hearing until the end of the comment period.

I. INTRODUCTION

A. STATUTORY BACKGROUND

1. Food Additives Amendment of 1958

Section 409 of the Federal Food, Drug, and Cosmetic Act (Food Additives Amendment of 1958, Pub. L. 85-929) establishes criteria and prescribes procedures for FDA's premarket review and approval of food additives that have been shown to be safe. Sec-

tion 409 was enacted to protect consumers by requiring substances that are intentionally added to food, or may reasonably be expected to become components or otherwise affect the characteristics of food, to be shown to be safe through rigorous scientific testing procedures. As the legislative history of the amendment demonstrates, one primary function was to protect the health of consumers by requiring manufacturers of food additives and food processors to test any potentially unsafe substances that are added to food in accordance with principles deemed appropriate by qualified scientists (Ref. 1).

Before the amendment, FDA's authority for ensuring the safety of food additives was limited to sections 402(a)(1) and 402(a)(2)(A) as enacted in 1938. Under these sections the agency must show that an intentionally added food substance may be injurious to health. Thus, the agency has to test the poisonous or deleterious substance before taking action. Therefore, the amendment shifted the burden of both testing and proving safety to the proponent of the additive.

When the Committee on Interstate and Foreign Commerce reported the bill to the full House of Representatives, the bill did not contain an anticancer clause, but it did contain a section requiring the premarketing testing of food additives to demonstrate safety. That section is now known as the general safety provision (section 409(c)(3)(A)). After the bill was reported out, Congressman Delaney suggested the addition of the anticancer proviso to the bill, and the following proviso was added to the bill as a Committee amendment on August 13, 1958:

*** Provided, That no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal ***

Reportedly to assure enactment of the legislation, the Committee and the Department of Health, Education, and Welfare (HEW) agreed to the amendment, but in a letter to the Chairman of the Committee, then Assistant Secretary Elliot L. Richardson noted that the amendment did not change the meaning of the bill. Moreover, the letter also illustrates the interaction between the general safety and anticancer provisions of the bill and the broad scope that the Delaney anticancer clause is to be given. It makes clear that the anticancer clause is a corollary of the general safety clause; and that compounds, even when subject to the anticancer clause, are also subject to the general safety clause:

This Department is in complete accord with the intent of these suggestions—that

no substance should be sanctioned for use in food that might produce cancer in man. H.R. 13254, as approved by your committee, will accomplish this intent, since it specifically instructs the Secretary not to issue a regulation permitting the use of an additive in food if a fair evaluation of the data before the Secretary fails to establish that the proposed use of the additive will be safe. The scientific tests that are adequate to establish the safety of an additive will give information about the tendency of an additive to produce cancer when it is present in food. Any indication that the additive may thus be carcinogenic would, under the terms of the bill, restrain the Secretary from approving the proposed use of the additive unless and until further testing shows to the point of reasonable certainty that the additive would not produce cancer and thus would be safe under the proposed conditions of use. This would afford good, strong public health protection (Ref. 2).

As enacted in 1958, the anticancer (or so-called Delaney) clause of section 409 flatly proscribed the approval of any additive if after "a fair evaluation of the data before the Secretary" the additive "is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal * * *." As applied to additives added directly to human food, this language has remained unchanged, although hotly debated. Accordingly, as a legal matter, section 409 precludes a finding by FDA that a direct food additive that has been shown, by ingestion or other appropriate studies, to cause cancer in laboratory animals (or, of course, in man) can be safely added to food, in any amount, for any purpose.

2. Color Additive Amendments of 1960

The Color Additive Amendments of 1960 (Pub. L. 86-618) added a provision to the basic act for colors that is directly analogous to the food additive provision. Petitioners for color additive regulations must demonstrate by rigorous testing the safety of these additives before they can be approved by FDA for addition to food, drugs, or cosmetics. In addition, the amendments added another anticancer clause to the act.

The legislative history of the Color Additive Amendments of 1960 describes the congressional and executive (HEW) concern about the potential carcinogenicity of these color additives; nevertheless, the Secretary of HEW again explained that an express anticancer clause was unnecessary to prevent approval of carcinogenic or potentially carcinogenic color additives because it did not provide any public protection that is not already provided by the general safety clause (Ref. 3).

3. Drug Amendments of 1962

In 1962, Congress culminated several years of hearings on the drug industry by enacting the Drug Amendments of 1962 (Pub. L. 87-781); the infamous thalidomide incident provided the impetus for the bill's passage. The drug amendments brought about a comprehensive revision in the regulation of new drugs, which at the time included both human and animal drugs. The drug legislation also amended the anticancer clauses to rectify what Congress perceived as the inequity associated with the prior sanctioned use of diethylstilbestrol (DES) in animal feed. Under the Food Additives Amendment of 1958, certain DES uses in animals were prior sanctioned because they were covered by an effective New Drug Application (NDA). Thus, continued use in accordance with the prior sanction was appropriate until that use was cancelled (the NDA revoked), but no new uses in food or food-producing animals were approvable due to the Delaney clause (Refs. 4 and 5).

The act requires that compounds administered to animals as food additives, color additives, or animal drugs be shown to be safe for use. As defined in section 201(u) of the act (21 U.S.C. 321(u)), the term "safe" clearly embraces the health of man, as well as the health of the animals to which the compounds are given. Thus, in evaluating the safety of compounds to be administered to animals raised or maintained for production of food for man, such as cattle, swine, and poultry, Congress has from the beginning recognized that consideration must be given to the safety of possible residues of the compounds in the products of animals that become food for man, i.e., meat, milk, and eggs.

Before 1962, the anticancer clauses in sections 409 and 706 did not distinguish between compounds added directly to human food and compounds that might indirectly enter human food through administration, as feed additives or drugs, to food-producing animals. The act was interpreted as forbidding FDA to approve the use of a carcinogenic animal drug whether or not the compounds might leave any residues in the edible tissues of the animal.

Modification of the effect of the anticancer clause of section 409 had first been suggested during congressional consideration of the Color Addition Amendments of 1960. In May 1960, the then Secretary of Health, Education, and Welfare had urged Congress to modify the act, explaining:

There is * * * one respect to which the anticancer proviso has proved to be needlessly stringent as applied to the use of additives in animal feed. For example, in the case of various animals raised for food pro-

duction, certain drugs are used in animal feed which will leave no residue in the animal after slaughter or in any food product (such as milk or eggs) obtained from the living animal, and which are therefore perfectly safe for man. If this is demonstrated with respect to any particular additive intended for animal feed, and the additive will not adversely affect the animal itself during its expected or intended life cycle, we can see no reason for not permitting such a use of an additive which could be highly useful and beneficial in the raising of animals for food. * * *

We therefore have included in the enclosed draft bill an amendment to permit use of an additive in animal feed under the above-mentioned conditions.

Under the amendment, the assay methods applicable in determining whether there will be a residue shall be those prescribed or approved by us by regulations. This will give reasonable certainty in that regard, although, of course, such regulations may from time to time be changed as new scientific developments demonstrate a need for change. It should be clearly understood that the industry still would have the responsibility of developing adequate analytical methods for detecting residues and furnishing them to the Government with a petition for approval of an additive (Ref. 3).

The amendments proposed by the Department had not been included in the color additive legislation. During the following 2 years, however, concern had been continuing about application of the anticancer clause in section 409. As a result, legislation similar to that earlier recommended by HEW was introduced in 1962. The House Committee on Interstate and Foreign Commerce ultimately included modifications of the anticancer clause in its report on the Drug Amendments of 1962, with the following explanation:

The committee amended the anticancer clause of the food additives amendment and the color additive amendment of the Federal Food, Drug, and Cosmetic Act by making this clause inapplicable to chemicals such as veterinary drugs when used in feed for food-producing animals if the Secretary finds (1) that under the conditions of use and feeding specified in the proposed labeling and reasonably certain to be followed in practice, such additive will not adversely affect the animals for which such feed is intended, and (2) that no residue of the additive will be found (by methods of examination prescribed or approved by the Secretary by regulations) in any edible portion of the animal after slaughter or in any food such as milk or eggs yielded by or derived from the living animal (Ref. 4).

Representative Leonor K. Sullivan objected to the proviso in the floor debate on the amendments and proposed a separate amendment to delete the proviso from the bill because "they (the provisos to the Delaney clauses) weaken instead of strengthen consumer protection." She reminded the House that DES had been regarded as safe for use in poultry at one

time because no residue was found in the meat; later, that use had to be terminated when DES residues were found as a result of improved testing methods. But her amendment was defeated principally on the argument that, if DES were available for manufacture by those who obtained approvals before 1958, i.e., the prior-sanctioned uses, it should be made available for manufacture by everyone (Ref. 6).

The Senate accepted the modifications of the anticancer clauses in conference while preserving, as Senator Hubert Humphrey noted, the full vigor of consumer protection afforded by Delaney clause (Ref. 7). These modifications have come to be known as "the DES proviso."

4. Animal Drug Amendments of 1968

The animal feed industry experienced an era of unprecedented growth and innovation beginning in the 1950's. That industry and the animal drug industry began an effort in the mid-1960's to consolidate the various provisions of the Federal Food, Drug, and Cosmetic Act governing the premarketing approval of drugs intended for use in animals, i.e., sections 409, 505, 507 (21 U.S.C. 348, 355, and 357) which culminated in the enactment of the Animal Drug Amendments of 1968 (Pub. L. 90-399). Neither the committee reports on the bill nor the floor debates raised the issue of the Delaney clause. Consequently, the Animal Drug Amendments of 1968 passed without controversy and added, under section 512(d)(1)(H) of the act, the following anticancer clause and proviso:

(H) such drug induces cancer when ingested by man or animal or, after tests which are appropriate for the evaluation of the safety of such drug, induces cancer in man or animal, except that the foregoing provisions of this subparagraph shall not apply with respect to such drug if the Secretary finds that, under the conditions of use specified in proposed labeling and reasonably certain to be followed in practice (i) such drug will not adversely affect the animals for which it is intended, and (ii) no residue of such drug will be found (by methods of examination prescribed or approved by the Secretary by regulations, which regulations shall not be subject to subsections (c), (d), and (h)), in any edible portion of such animals after slaughter or in any food yielded by or derived from the living animals, * * *.

Again, the legislative history indicates that the legislation in no way weakens FDA's authority to regulate new animal drugs (Ref. 8).

B. STATUTORY INTERPRETATION

The enactment in 1962 of the so-called DES proviso to the Delaney clause has been a source of continuing controversy. There is no unanimity on the proper interpretation of the proviso; and the legislative history of the

proviso, summarized above, does not lay to rest all doubts.

Two interpretations of the proviso are, in theory, possible. The first interpretation, which in the Commissioner's judgment is the less probable, is that Congress intended to allow FDA to approve the use of a carcinogenic compound in food-producing animals only if the agency could be absolutely positive that no traces whatever—no matter how small—would remain in edible tissues.

This interpretation presents several difficulties, all stemming from the fact that any introduction of a compound, whether or not carcinogenic, is likely to leave in edible tissues minute residues, which are below the level of detection of any known or likely to be developed method of analysis, i.e., assay. It is a fundamental fact of analytical science that for every assay developed to measure the concentration of a chemical compound in a medium (in this case, a residue in an edible tissue), there is some lowest concentration or level of the compound below which the assay will not yield an interpretable result (Ref. 9). If, for example, an assay measures a particular compound in muscle tissue, i.e., an edible tissue, and the assay has been shown to have a lowest limit of measurement of 1 part per billion (1 ppb—1 part compound in 1 billion parts tissue on a weight basis, such as 1 nanogram of compound per 1 gram of tissue), examination of muscle tissue using this assay will reveal that the compound is present only if its concentration in muscle tissue is 1 ppb or higher. If the compound is present in the tissue at a level below 1 ppb, use of the assay will yield no interpretable result. Thus, the assay cannot distinguish between muscle tissues containing the compound at levels below 1 ppb and muscle tissues from which the compound is absent in the absolute sense of the term.

Although different assays may have different lowest limits of measurement, all assays are subject to the same type of limitation. Thus, when a tissue is examined with an assay having a lowest limit of measurement of 1 ppb and no interpretable response is observed, the analyst can conclude only that the compound under analysis is not present at a level of 1 ppb or above. It can never be concluded that the compound is "not present" in the absolute sense. It is thus impossible to determine the conditions under which edible tissues derived from food-producing animals that have received a carcinogen will contain no residue if the phrase "no residue" is to be interpreted literally. Accordingly, this first possible interpretation of the DES proviso would not permit approving any known carcinogenic animal drug

because the Commissioner could never find that no trace whatever would remain in the edible tissues of the animals to which the compound was administered.

This interpretation would thus render the DES proviso a "Catch-22." The proviso would permit the Commissioner to approve carcinogenic drugs for animals only when certain that no residues whatever would remain, but since the Commissioner could conclude only that some trace might well remain, no such drug could ever be approved.

Nevertheless, one comment on the February notice contended that Congress did indeed intend that the no-residue provision be a flat prohibition on any molecules of a carcinogen in food. The comment further argued that Congress did not understand fully the scientific ramifications of its action when it amended the pristine Delaney clause.

As the Commissioner noted in the February notice, the "absolutely no molecules" interpretation seems, at the very least, an improbable interpretation of an amendment enacted by Congress precisely because it wanted to relieve animal drugs from the rigid strictures of the anticancer clauses. Moreover, any interpretation of a statutory provision that would render it totally inoperative should be rejected unless considerations of overwhelming persuasiveness require that interpretation. No such considerations have been advanced in support of the "absolutely no molecules" interpretation of the DES proviso.

Furthermore, this interpretation is difficult to reconcile with the language of the DES proviso itself. It specifies that "no residue" may be "found * * * by methods of examination prescribed or approved by the Secretary * * * in any edible portion of such animals * * *." This language conspicuously avoids such words as "occur" or "remain," and instead, by use of the word "found" emphasizes detectability. Moreover, the same proviso refers to "conditions of use * * * reasonably certain to be followed in practice," suggesting a congressional recognition that some occurrences of these residues (i.e., resulting from unforeseeable misuse) might not require withdrawal of approval of a compound even if they were detected.

A second, and in the Commissioner's view more plausible, interpretation of the DES proviso accepts the words of the amendment and focuses on the previously quoted language, "no residue of such drug will be found * * * by methods of examination prescribed or approved by the Secretary by regulations * * *." Under this interpretation, a sponsored compound that is carcinogenic may be approved for use in ani-

imals if examination of edible tissues by an assay approved by FDA reveals no residues. This interpretation also appears implicit in the limited case law addressing the issue (*Hess & Clark, Division of Rhodia, Inc. v. FDA*, 495 F.2d 975 (D.C. Cir. 1974), *Chemtron Corp. v. United States DHEW*, 495 F.2d 995 (D.C. Cir. 1974), and *AHI v. FDA, supra*).

This second interpretation is in essence the one that FDA has followed since the passage of the DES proviso. The agency has approved carcinogenic compounds for use in animal feed or as animal drugs on the basis of assays capable of measuring prescribed levels of residues.

The court in *AHI v. FDA* found lacking the agency's previous attempt to define and explain, as a binding rule, the criteria and procedures for evaluating assays for carcinogenic residues in edible products of animals. The court held that FDA had failed to provide adequate public notice. One purpose of this document is to correct that defect.

The Commissioner believes that the criteria to be applied in evaluating assays for carcinogenic residues in the edible tissue of food-producing animals must further the congressional intent to minimize public exposure to carcinogens, without nullifying the decision reflected in the DES proviso, as the first interpretation of the proviso would do. As explained more fully below, the criteria set forth in these regulations for evaluating assays for carcinogenic residues are minimum requirements. They are designed to identify assays that are (1) reliable and practical for use by a regulatory agency and (2) capable of measuring residues at levels that have been determined, on the basis of animal toxicity tests, to present no significant increase in human risk of cancer. An assay that does not meet both criteria cannot be approved. The Commissioner recognizes that, for some compounds currently in use, no reliable and practical assay capable of sufficiently low limits of measurement now exists and that approval of their continued use must therefore be reexamined.

Arguing that the Commissioner has incorrectly interpreted the Delaney clause, AHI contends that it is a precise statutory provision that must be construed very narrowly. Therefore, AHI charges that the Commissioner's interpretation has unduly, and illegally, broadened the scope of the anticancer clause. AHI contends that FDA must prove that a compound is a carcinogen before the petitioner for the compound's use is required to comply with any provision of the proposed regulations. Ostensibly, AHI argues that FDA must prove that the sponsored compound is a carcinogen before a petitioner is required to submit either comprehensive data from long-

term animal studies (the fundamental information for assessing a compound's carcinogenicity), or certain data regarding the residues in food to which man will be exposed if the compound is approved. Also, AHI argues that FDA cannot prevent a sponsor from marketing a compound when any assay for a carcinogen is available, even if the assay fails to exhibit a lowest limit of reliable measurement required by the data and extrapolation procedure proposed in the regulations. Citing *Hess & Clark, Division of Rhodia, Inc. v. FDA*, AHI further contends that the Delaney clause imposes upon FDA a standard corresponding to the level of technology at the time the application for the compound (new animal drug application (NADA) or food additive petition) is approved. Moreover, AHI argues that the modified Mantel-Bryan procedure for statistically assessing the risk of chemical carcinogenesis, which was included in the February notice, is a theoretical procedure that would require petitioners to develop assays capable of measuring residues of compounds at levels that are far too conservative and that are technically and economically infeasible. The court in *AHI v. FDA* requested FDA to consider AHI's arguments on technical and economic feasibility.

AHI's argument concerning the burden of proof on the issue of carcinogenicity might have merit if the Delaney clauses stood alone and were applied in isolation from the other provisions of the FFDC Act. However, ever since their enactment, the anticancer clauses have been regarded as a particularization of the general safety sections of the act, to which they attach as provisos; and they have been applied in conjunction with the general safety provisions. They do not expand the scope of these sections. Under these general safety provisions, a compound cannot be approved unless it is shown to be safe and in every case the petitioner has the burden of showing safety. Section 409(c)(3)(A) prohibits approval of a food additive if "the data before the Secretary . . . fails to establish that the proposed use of the food additive . . . will be safe . . ." Section 706(b)(4) prohibits the Secretary from approving a color additive "unless the data before him establish that such use . . . will be safe . . ." Section 512(d)(1)(B) requires the Secretary to deny approval of a new animal drug if "the results [of tests submitted to the Secretary] show that such drug is unsafe for use under [the conditions prescribed, recommended, or suggested in the proposal labeling thereof] . . . or do not show that such drug is safe . . ." These sections of the act do not impose on FDA any burden to prove that a substance is unsafe. Rather, they impose on the petitioner for approval the burden of showing

that, under the proposed conditions of use, the compound is safe.

"Safe" means safe in all respects—including safe from carcinogenicity. Thus, AHI's argument that the burden is on FDA to show carcinogenicity rather than on the sponsor to show noncarcinogenicity is contrary to the clear language of the act. It would impose on FDA two burdens that Congress manifestly intended to impose on petitioners for approval of substances under the act—the burden of testing for safety and the burden of proof on the issue of safety. The Delaney clauses clarify and emphasize the congressional intent to protect the public from carcinogenic risks; AHI would transform them into clauses that reduce the protection from carcinogenic risks already provided by the general safety provisions.

The general safety provisions of the act provide the context for the Delaney clauses. Under them the sponsor of a compound must submit adequate tests by all reasonably applicable methods to show that the sponsored compound will be safe when used. This showing, of course, requires not only toxicity testing but also an assay suitable for measuring the compound and substances formed in or on food as a result of its use. Only after the sponsor of a compound has conducted all the required tests and submitted the resulting data is FDA required to make any showing that the Delaney clause or the DES proviso is applicable or that the compound has not otherwise been shown to be safe.

Adoption of AHI's interpretation that FDA must prove that a compound is a carcinogen before the necessary data are submitted requires an illogical reading of the statute in light of its overall purpose and the legislative mandate surrounding it. Therefore, the Commissioner rejects AHI's scheme of regulating chemical carcinogens and potential carcinogens.

Scrutiny of the *Hess & Clark* decision shows that the court did not even consider the procedure that FDA used to designate requirements for an assay under the DES proviso to the Delaney clause; rather, the court accepted as valid the agency's designation of an assay. To the extent that the procedures and criteria set forth in this notice for assessing assays differ from those used in evaluating the assay involved in *Hess & Clark*, they are being adopted by rulemaking in an area in which the agency has considerable expertise and discretion because the area involves protecting the public against cancer.

AHI's allegations that the regulations are technically and economically infeasible is an attempt to characterize the agency's actions as arbitrary and capricious. Several environmental statutes (e.g., Clean Air Act, Federal Water Pollution Control Act, Federal

Insecticide, Fungicide, and Rodenticide Act) contain specific provisions requiring the Environmental Protection Agency (EPA) in certain instances to make elaborate cost/benefit calculations in setting safe levels of human exposure to chemicals in the environment. Also, these statutes provide that EPA protect the environment from contaminants by setting standards for the discharges permitted. EPA is authorized to establish two types of standards—health-based standards and technology-based standards. For certain health-based standards the Supreme Court has authorized that agency to require pollution reduction by methods that are neither economically nor technically feasible when the agency is not explicitly required to consider cost (*Union Electric Company v. EPA*, 427 U.S. 241 (1976)). The United States Court of Appeals for the District of Columbia Circuit has subsequently reached similar conclusions when interpreting analogous provisions of the Federal Water Pollution Control Act, concerning regulation of the discharge of toxaphene endrin, and polychlorinated biphenyls (PCB's) (see *Hercules, Inc., et al. v. Environmental Protection Agency*, No. 77-1248 (D.C. Cir. Nov. 3, 1978); *Environmental Defense Fund, et al. v. Environmental Protection Agency*, No. 77-1091 (D.C. Cir. Nov. 3, 1978)).

The two possible exceptions not applicable here (establishment of tolerances for unavoidable contaminants under section 406 and for pesticides under section 408(h)), the Federal Food, Drug, and Cosmetic Act contains no provisions requiring the Commissioner to consider costs or technical feasibility in making any safety decision, including any decision involving cancer-causing chemicals. The distinction between the statutory provisions applicable to food additives, color additives, and animal drugs and those applicable to pesticides and unavoidable contaminant tolerances demonstrates Congress' decision to make costs and technical feasibility relevant to some public health matters but not to others. Nevertheless, in light of the court's remand order, the Commissioner recognized the agency's obligations to review this element of the proposal. Based on the act's legislative history, the case law, and the agency's public protection function, the Commissioner concludes that the procedures used to designate requirements for assays can be technology-forcing if necessary.

The Commissioner's interpretation recognizes the tension between the need to provide health protection and the costs of that protection, and it attempts to spur the private sector into technological change only when such change is necessary for protection of the public health. To do otherwise might force the public to accept an in-

creased disease burden that it would unknowingly have to bear. The agency recognizes that the public health is not advanced by imposing requirements for what is neither economically nor technically possible. It also recognizes that public health regulation requires common sense, a sense of proportion, and awareness of economic and technical factors. In particular, the agency should not impose economic costs that are not justified by some reduction of risks to the public health. Nevertheless, the agency can properly require improvements in or developments beyond currently available technology when there is sufficient reason to believe that those improvements or developments are feasible and are needed to protect the public health. In enacting public health legislation, Congress intends that administrative agencies carry out their assigned missions with intelligence, good sense, and an awareness of the context and consequences of their actions; but unless it has expressly said so, there is no reason to think that it intended them to be in thrall to the technological or economic status quo.

In the immediate context, the statutory structure and language provide considerable guidance with respect to the issue of feasibility and costs. The language permitting the use of carcinogenic substances under certain circumstances is a proviso to a clause prohibiting the use of carcinogens, and that clause itself is a particularization of a provision requiring safety generally. It is clear that in enacting the DES proviso Congress intended to create no additional risk of human cancer beyond what would have existed in the absence of the DES proviso. That is why Congress used the language "no residue * * * will be found." By enacting and twice re-enacting the Delaney clause, Congress made clear its willingness to ban entirely from the human food supply food additives, color additives, and animal drugs that present a carcinogenic risk to man. It enacted the DES proviso with the intent and expectation that the provision that "no residue * * * will be found" would sufficiently protect the human food supply from any significant cancer risk from food additives, color additives, and animal drugs. Thus, in enacting the DES proviso, Congress did not change in any way the policy of the Delaney clause to protect the human food supply from carcinogenic additives and animal drugs; it merely eliminated an application of the clause that it considered unnecessary to the complete achievement of that policy.

From this statutory structure and language, it is evident that any consideration of feasibility and costs is subsidiary to the overriding congressional purpose to permit no additional human cancer risk from food addi-

tives, color additives, or animal drugs. The Commissioner's discretion to establish "methods of examination" for detecting residues is to be exercised so as to carry out that congressional purpose. The factor that determines the acceptable level of measurement of an assay method is protection of the human food supply from carcinogenic risks. If, on the basis of toxicological considerations, the Commissioner determines that a certain level of assay measurement is necessary to prevent a significant human cancer risk from use of a carcinogenic substance in food animals, then a method having that level of measurement is necessary to carry out the congressional purpose. If no such method is feasible, or if it is too costly to develop or apply one, then the choice is between refusing to permit the use of the substance altogether and permitting its use despite the fact there is no method of examination that can prevent the use of the substance from presenting a significant human cancer risk. Under the general safety clause and the Delaney clause, that choice can be resolved in only one way: by refusing to permit the use of the substance.

During the last decade, FDA has been monitoring significant trends in the development of chemical, physical, and biochemical methods of analysis of trace toxicants in biological matrices, i.e., tissues, biological fluids, etc. In some cases the agency has examined the available methods, and the trends, of analysis of specific toxicants of public health concern (Ref. 10). In other cases the agency has prepared and submitted to Congress reports on the advancing frontiers of the analytical sciences (Refs. 11 and 12). One of the central findings of this continuing activity is the observation of what can properly be regarded as spectacular scientific progress in achieving ever-decreasing lowest limits of measurement. There is no reason to believe that this progress in analytical chemistry will stop or slacken in the foreseeable future.

Table I shows the trend of the increasing capacity of analytical chemistry to detect the presence of chemicals. Depending on the substance or class of substances, this decrease in the lowest limits of measurement during the last 20 years ranges between two and five orders of magnitude. Table I also suggests that recognition of a public health problem associated with a toxicant accelerates the improvement of analytical methods needed to detect and measure it. In this connection it should be noted that accelerated rates of improvement in analytical methods have generally been the result of public health concerns diffused among the members of the scientific community at large. They have not usually been the result of the concerted effort of a sponsor or industry to gain approval for use of a substance of commercial value.

TABLE I.—Trends in Analytical Chemistry Detection Techniques

Compound and date	Detection technique	Limit of measurement	Relative specificity
DDT:			
1940's, 1950's	Colorimetric	10 ppm	Low.
1950's, 1960's	Paper chromatography	1 ppm	Moderate.
1970's	Gas chromatography	Few ppb	Do.
	Gas chromatography/mass spec	Few ppb	High.
Dioxins:			
1940's			
1950's, 1960's	Thin layer chromatography	Non quant.	Moderate.
1970's	Gas chromatography/mass spec	Less than .1 ppb	High.
Mitrosamines:			
1940's			
1950's, 1960's	Thin layer chromatography	10-20 ppb	Moderate.
1970's	Gas chromatography/mass spec	2 ppb	High.
Cortisone:			
1940's			
1950's, 1960's	Colorimetric	4 ng/ml	Low.
1970's	High press liquid chromatography	About 5 ng	Moderate.
Chlorpromazine:			
1940's, 1950's	Titrimetric	50-100 mcg	Low.
1960's, 1970's	chromatography	A few mcg	Low.
Hallucinogens (LSD, mescaline):			
1940's			
1950's			
1960's	Colorimetry	mcg/ml	Low.
	Gas chromatography, fluorescence	25 ng	Moderate.
1970's	NMR	Sub ng	High.
Reserpine:			
1940's			
1950's, 1960's	Colorimetry	Greater than 10 ppm	Low.
1970's	Fluorescence	About 5 mcg/ml	High.
Lead:			
1940's	Colorimetry	About 10 ppm	Low.
	Polarography	About 0.1 ppm	High.
1950's	do.	do.	Do.
1960's	Atomic absorption	About 1 ppm	Do.
1970's	do.	do.	Do.
Cadmium:			
1940's			
1950's, 1960's	Colorimetry	About 50 ppb	Medium.
1960's, 1970's	Atomic absorption	About 0.3 ppb	High.
Digitals drug:			
1940's	Bioassay	LD ₅₀ 80 mg/kg	Low.
1950's	do.	do.	Do.
1960's	do.	do.	Do.
1970's	Radioimmunoassay	About 0.5 ppb	High.
Carbamates:			
1940's			
1950's, 1960's	Thin layer chromatography, gas chromatography	50-100 ng	Moderate.
1970's	Gas chromatography	About 1 ng	High.
Organophosphates:			
1940's			
1950's			
1960's	Gas chromatography	About 40 pg	Moderate.
1970's	do.	do.	High.

Next, Table II shows the capability of some assays that are currently being used to measure trace contaminants in food. Although the assays have not been evaluated by all the specific criteria proposed by the regulation, they are useful regulatory tools; and the lowest limits of reliable measurement for these assays (which were principally developed by the government for monitoring purposes) illustrate the forefront of current analytical chemistry.

TABLE II.—Some Assays for Trace Contaminants in Food That Reflect Current Analytical Capabilities

Substance under assay	Food	Limit of measurement ¹	Detection and confirmatory techniques	Reference ²
Cadmium, copper, and lead	Several types	5	Anodic stripping voltammetry ³	Jones, et al. (1977).
N-Nitrosamines	Several types including meat	10	Gas-liquid chromatography (GLC); mass spectrometry (MS)	Fazio, et al. (1971); Fine, et al. (1975).
Aflatoxins B1, B2, G1, G2	Peanut butter	5.0 ⁴	High pressure liquid chromatography; fluorescence detector	Panskake and Scott (1977).
Benzo[a]pyrene	Smoked foods	2	Thin layer chromatography ⁵ (TLC) ultraviolet and fluorescence detection	Howard, et al. (1966).
Aflatoxin M1	Milk	0.1	TLC-fluorescence detection ⁶ ; chemical derivation ⁷	Official Methods of Analysis of the AOAC.
Aflatoxin B1, B2, G1, G2	Peanut butter	5.0	TLC-fluorescence detection ⁶	Official Methods of Analysis of the AOAC.
	Corn		TLC chemical derivation ⁷	Official Methods of Analysis of the AOAC.
Aflatoxin B1	Eggs	0.1	TLC-fluorescence detection; chemical derivation ⁷	Nesheim, et al. (1978).
Arsenic, selenium, antimony, and tellurium	Several foods	10 to 20	Atomic absorption; spectrometry; chemical derivation	Florino, et al. (1976).

TABLE II.—Some Assays for Trace Contaminants in Food That Reflect Current Analytical Capabilities—Continued

Substance under assay	Food	Limit of measurement ¹	Detection and confirmatory techniques	Reference ²
Several chlorinated pesticides.....	Several foods.....	30 to 50	GLC-2 different.....	Official Methods of Analysis of the AOAC.
Tetrachlorodibenzodioxin.....	Fat, milk, others.	.0001 to .010.	Chromatography resolution MS (direct probe).	O'Keefe, et al. (1975); Hummel, P. A. (1977).

¹Parts per billion.²References available from: John Arnold, Industry Information (HFV-226), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.³Found reliable in interlaboratory validation study.⁴Sum of all four compounds.

In view of these trends, the Commissioner has examined the general analytical requirements that these regulations will place on animal drug sponsors. Table III below shows the acceptable total level of residues in the diet for representative compounds believed to be carcinogens. These estimated acceptable total dietary levels are derived from bioassay data on the parent compounds alone. The lowest limits of reliable measurement for these compounds that would be required if the compounds were subject to the proposed regulation cannot be calculated in the absence of metabolism data in animals in which a sponsored compound is proposed or intended for use (target animals). Nevertheless, the values do approximate the limits of measurement that would be required by the regulations and are therefore suitable for comparison with the current analytical capabilities that are shown in Tables I and II. It should be noted that for some compounds the lowest limit of reliable measurement derived from toxicity data may go beyond current analytical capabilities; that it may, however, reflects the technology-forcing aspects of the proposed regulation.

TABLE III.—Estimated Acceptable Total Dietary Levels of Several Known or Suspected Carcinogens for a Lifetime Risk Level of 1 in 1 Million

Compound	Reference ¹	Dose ²
DDT.....	Tomatis, et al. (1972).....	.4
Dimethylnitrosamine.....	Terracini, et al. (1967).....	.05
Ethylene Thiourea.....	Graham, et al.	2.0
NTA.....	National Cancer Institute Clearinghouse on Carcinogenesis.	260.0
Vinyl chloride.....	Maltone (1975).....	6.7

¹Available from John Arnold, Industry Information (HFV-226), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.²Calculated according to Hoel, et al. (1975) (Ref. 63). (In parts per billion.)

The Commissioner concludes that given the known trends in the development of improved analytical methodology the imposed requirements are attainable at the expense of reasonable effort.

The goal of regulating compounds that are to be used in food-producing animals is to ensure that none is permitted to yield residues in edible tissues at concentrations presenting a risk of carcinogenesis above an acceptable level. This acceptable level of maximum allowable risk (see section V. C. 8 in this preamble) is applied to all carcinogens; thus, equitable treatment of all such substances is afforded by these regulatory requirements. Different carcinogens will require different assay capabilities because of differences in carcinogenic potency. The regulations are designed to require that the lowest limit of measurement of an assay be commensurate with a compound's carcinogenic potency. Because it is not possible to specify the required limits of measurement for carcinogens in the absence of animal bioassay data, it is not possible to ensure in advance that all compounds for which approval is sought in the future will be able to be used in ways that satisfy the requirements of the regulations. It may be that some sub-

stances present health risks so great that there is no current technology available that can permit their safe use. In these instances the Delaney clause (including the proviso) requires that the Commissioner not relax health standards in order to approve such substances.

From the information described above, the Commissioner believes that analytical science can meet these regulatory requirements. The Commissioner is not aware of any data to the contrary. Based on this review, the Commissioner has concluded that compliance with the proposed regulations is feasible, although some technological innovation may be necessary.

Questions have arisen about the practicality, efficiency, and overall public protection afforded by automatically adopting new assays that reliably measure lower levels of residues in such assays becomes available after a sponsored compound has been approved for use. In the February notice the Commissioner suggested that this problem is largely theoretical once an assay meeting the minimum criteria is approved. The decision to approve an assay for a sponsored compound under these principles represents the agency's conclusion that the compound has been shown to meet all the statutory

requirements of safety. Accordingly, once assay methods have been approved, new methods will not be required without new toxicological data showing that the lowest limit of reliable measurement of residues under these regulations is inappropriate.

It is true that these proposed regulations will permit the approval, for use in animals feed or for use as animal drugs, of carcinogenic compounds that are likely to leave residues below the lowest level of reliable measurement of any assay meeting all the criteria of the regulation. Indeed, as a result of Congress' enacting the DES proviso, the agency will not have any certainty that these residues, in amounts below the level of detectability, are not always present. This result makes sense in practical terms, however, for a regulatory agency cannot effectively control residues—of any compound—that are so small that they escape measurement by every available assay. In sum, the interpretation adopted in these proposed regulations is reconcilable with both the purpose and language of the DES proviso. This interpretation will further the congressional objective of minimizing public exposure to residues of carcinogenic compounds. It does not force technology beyond the point that needs to be reached to carry out the purpose of the Delaney clause and the general safety provisions. It does not impose infeasible requirements or costs except to the extent that they are necessary to carry out that purpose.

C. OVERVIEW OF THE REGULATIONS

The proviso to the anticancer clauses allows the approval of the use of carcinogens in food-producing animals if, under conditions of use "reasonably certain to be followed in practice," no residue is found by an assay prescribed or approved by the Secretary. To ensure public protection consistent with the anticancer and the general safety provisions of the act, the Commissioner must establish criteria for approving assays to include, among other things, an adequate lowest limit of measurement.

Accordingly, these proposed regulations would establish criteria for accepting assays used to measure residues of carcinogens in edible tissues of food-producing animals to which carcinogens have been administered. Such criteria cover assay attributes such as dependability, practicability, specificity, accuracy, and precision. Also, the regulations would establish a specific criterion for the lowest limit or reliable measurement that an assay must meet, as a minimum, before it can be approved by the agency for control of carcinogenic residues. This criterion for the required lowest limit of measurement of an assay derives from toxicological data obtained from carcinogenicity studies and from an operational definition of the no-residue standard of the act. Only if an assay meeting the above criteria is available would the Commissioner have a mechanism to discriminate be-

tween tissue containing a residue and tissue containing no residue. Without such a monitoring mechanism, the Commissioner would have no way to determine whether a carcinogenic drug or additive administered to a food-producing animal is being or even can be used in compliance with the act.

In these regulations the Commissioner proposes to establish a rigorous premarket testing process for sponsored compounds intended for use in food-producing animals. As proposed, all sponsored compounds must initially undergo a threshold assessment for carcinogenic potential. For those sponsored compounds having a carcinogenic potential, a procedure is prescribed to determine the minimally acceptable lowest limit of reliable measurement for a regulatory assay. Because this limit is determined on the basis of toxicity data, the Commissioner may conclude that an assay satisfying the requirements of the regulations is capable of demonstrating the absence in food of residues that present a risk of cancer to man. By thus particularizing the statutory requirements, the Commissioner proposes to establish the basis for accepting or rejecting compounds which the sponsor claims satisfy the no-residue standards.

1. *Fundamental questions.* For every drug of additive proposed for use in food-producing animals (the sponsored compound), the Commissioner is required by the act to determine whether that sponsored compound can be used in ways that are safe for the animals to which the compound will be administered (target animals) and whether food (meat, milk, and eggs) derived from such animals (edible tissues) will be safe for human consumption. The sponsor of the compound is therefore required to furnish the Commissioner the scientific and technical information necessary for that determination; the Commissioner in turn is required by the act to determine on the basis of all available data whether, in actual practice, the sponsored compound can be used in compliance with the law.

Although a petitioner proposing to use a carcinogenic compound in food-producing animals has a major obligation to develop a practical and reliable assay capable of discriminating tissues that contain residues from tissues free of such residues, as defined operationally, such an assay cannot be developed without certain scientific and technical information.

Specifically, for every sponsored compound, several questions must be answered before an assay can be developed or approval of the compound considered:

a. What is the chemical nature of the sponsored compound and how is it to be used?

b. Based on preliminary toxicological and biochemical information, does the compound have the potential to contaminate human food (edible tissues) with residues of carcinogenic concern?

c. If so, what is the chemical nature of the residues of the compound? in what tissues are they found? at what levels? and for what length of time?

d. Is the sponsored compound or any of the residues it produces in edible tissue carcinogenic in experimental animals or man?

e. If so, what level of residues can be operationally defined as satisfying the no-residue requirement of the act?

f. Can a reliable and practical assay be developed to measure the edible tissue residues at levels equal to or greater than those which operationally satisfy the no-residue requirement of the act?

g. At what time after exposure to the compound ceases do the edible tissues of exposed food-producing animals satisfy the no-residue requirement of the act, i.e., what is the necessary withdrawal time?

2. *Date collection process.* To answer the preceding questions, a petitioner must gather pertinent scientific information, the nature of which is particularized in this document. These proposed regulations would establish the procedure for gathering and evaluating the requisite scientific information. The process is stepwise and evolutionary because the need, as well as ability, to proceed to the next step of data collection depends upon the results obtained at each preceding step. If the evaluation of the data collected at each step indicates that questions on residues of carcinogenic concern remain, data collection must continue. If at some point in the data collection process it can be decided that the sponsored compound presents no human risk of carcinogenesis, the sponsored compound must be evaluated for any other health concerns under the general safety provisions of the act. In this case, the compound may be assigned a safe tolerance level in human food if the petitioner provides the data necessary to establish that the compound can be used safely.

These proposed regulations deal with carcinogenesis, which is a dominant concern in appraising the safety of any sponsored compound intended for use in food-producing animals. Nevertheless, each compound must also be evaluated for other potential adverse effects. Thus, for example, if the available information raises an issue as to the health of progeny, multigeneration studies of the sponsored compound and/or its residues must be codedigned and conducted as part of the process of collection and evaluation of data.

Under this proposal, if the Commissioner makes a threshold determination that a sponsored compound has the potential to contaminate food from food-producing animals with residues whose consumption would pose a human risk of carcinogenesis, the petitioner will be required to undertake the following six-step procedure for data collection and evaluation.

a. A metabolic study in the target animals designed to identify edible tissue residues of carcinogenic concern.

b. Metabolic studies of the sponsored compound in different species/strains of experimental animals designed to aid in selecting the test animal species to be used in chronic toxicity bioassays and in assessing the carcinogenicity of residues that cannot practically be tested individually ("intractable residues").

c. Chronic toxicity testing to assess the carcinogenic potential of residues of the sponsored compound and to furnish data suitable for statistical treatment so that the no-residue requirement of the act can be applied and implemented.

d. A detailed metabolic study of the sponsored compound in target animals designed to identify both a residue and tissue that can serve as indicators ("marker residue" and "target tissue") to determine whether the no-residue requirement of the act is satisfied.

e. Development of a regulatory assay to measure the marker residue in the target tissue at and above the level established in step d.

f. Establishment of the premarketing withdrawal period required for the safe use of the sponsored compound.

Although the particular provisos to the anticancer clauses of the act, sections 409(c)(3)(A), 512(d)(1)(H), and 706(b)(5)(B), vary slightly in their language, they have a common purpose. Therefore, the Commissioner believes that the criteria for their implementation should be identical. To avoid needless repetition, the Commissioner has used the language of section 512 of the act in discussing specific generic issues because the primary impact of these proposed regulations would be on new animal drugs regulated under that statute. The criteria set forth in this proposal would, however, apply to all chemicals intended for use in food-producing animals, and the appropriate regulations would be amended to adopt these criteria by reference.

II. THRESHOLD ASSESSMENT

In the 1973 notice of proposed rule-making, the Commissioner proposed that carcinogenicity testing not be required for every sponsored compound. Rather, the Commissioner concluded that the necessity for such testing will be dictated by an evaluation of the ex-

isting evidence from metabolic studies, toxicity testing, structural relationships of the sponsored compound and its metabolites to known carcinogens, modes of physiological actions and interactions, and the intended method of use of the sponsored compound.

Comments of two types were received on this feature of the proposal. The first suggested that extensive studies should be conducted from every sponsored compound to determine whether it is a carcinogen. One comment insisted that extensive carcinogenesis testing for every sponsored compound is the only accurate indicator of carcinogenic potential. Several contended that the criteria proposed for use in the threshold assessment were too vague, and objected to the failure to explain how such criteria could be applied in practice. Many other comments agreed with the Commissioner's proposal that extensive carcinogenicity testing should not be required for every sponsored compound. These comments recommended that the Commissioner review all available data on a sponsored compound before concluding that the stepwise testing procedure set forth in the proposals should be invoked. Comments of a similar nature were received on the 1977 notice. Furthermore, several comments asserted that the guidelines for the threshold assessment were not specific enough.

The Commissioner agrees that the guidelines for the threshold assessment were insufficiently specific, and the following discussion elaborates the agency's guidelines for conducting threshold assessments.

For every compound intended for use in food-producing animals, the fundamental question to be answered is: "What is the potential that the proposed use of the sponsored compound will contaminate the edible tissue of target animals with residues that engender a risk of cancer to humans?"

When a sponsor starts the process of obtaining approval for use of a compound, it provides to the agency information on matters such as the compound effectiveness and its proposed patterns of use. Often a sponsor will also provide preliminary physiological, metabolic, or toxicological data derived from its own studies or from the scientific literature. At this juncture, the Commissioner believes it necessary that a threshold assessment be made, based on the available data, on the need to proceed to the first of the six steps of data collection required by these proposed regulations. Because entry into the six steps of data collection requires that a petitioner undertake a series of complex and costly experimental studies, the Commissioner concludes that it is not reasonable to demand such studies on a sponsored

compound if the preliminary data available justify the determination that public health can be protected without so proceeding.

For the sake of clarity, "the total residue of the sponsored compound" and "residue of toxicological concern" are defined in proposed § 500.83 as follows:

"The total residue of a sponsored compound" means all compounds present in edible tissues of target animals that result from the use of the sponsored compound, including the sponsored compound, its metabolites, conversion products, and any other substances formed in or on food because of the sponsored compound's use. (The term "residue" means any single compound present among the total residue.)

"Residue of toxicological concern" means the total residue minus any constituent residue shown to be safe.

A. GENERAL PRINCIPLES

The threshold assessment is based on the principle that the probability that the use of a sponsored compound will yield edible food animal tissue presenting a risk of human carcinogenesis from residue is the product of the following three factors:

(1) The probability of human exposure to residues that may cause cancer, given the proposed pattern of the sponsored compound's use (Factor 1—Use);

(2) The expected average level or concentration of residues of toxicological concern in the edible tissue of treated target animals under the proposed conditions of use, i.e., when the animals have the potential for marketing as food (Factor 2—Residues of toxicological concern); and

(3) The probable toxicological significance of the residues, based on an assessment of the chemical structure of the sponsored compound, its likely metabolites, and other information suitable for predicting toxicity (Factor 3—Potential toxicological significance).

The threshold assessment functions on the premise that all three of these factors must be considered to answer the fundamental safety question posed above. Under the agency's threshold assessment approach, numerical scores are assigned to the sponsored compound, and each of the three scoring factors contributes to the total score. The following paragraphs describe the scoring system and procedures that can be used to collect data that may lead to information yielding the most reliable scores. By consulting this guideline, sponsors of compounds can assess the status of the sponsored compounds for which they seek approval and may therefore provide relevant and useful preliminary data.

The scoring system uses a value of 1,000 to discriminate between those compounds that will be regulated

solely according to the general food safety requirements of the act and those compounds that will, in addition, be subject to this proposed regulation. This system will provide uniformity to the threshold assessment of the risk to the public health from a sponsored compound's residues.

When the only preliminary information available is the proposed pattern of use (factor 1 above), the sponsored compounds will be subject to step 1 of the proposed regulations (§ 500.80(b)(1)(i)). Since without the necessary information FDA must make assumptions that require entry into step 1, petitioners have an incentive to gather pertinent information before approaching FDA.

This decision may be altered or confirmed by subsequent collection of data under these proposed regulations or under the other aspects of the general safety provisions of the act. For example, data collected to satisfy other concerns also covered in the general safety provisions may show that the compound is a potential carcinogen. In that case the compound will be evaluated under these proposed regulations. The obverse is also true.

B. THE SCORING SYSTEM

The total threshold assessment score for a sponsored compound is the product of the values for the three assessment factors.

1. *Factor 1—Use.* The use classification of sponsored compounds is divided into three categories, based on the frequency and extent of the target animal's treatment with the sponsored compound. The use factor is the probability that potentially consumable target animals will be treated with the sponsored compound. (See Table IV.) The values in Table IV represent ratios that approximate the likelihood of human exposure from the proposed use patterns in animals.

TABLE IV—USE FACTOR ASSESSMENT

Frequency and scope of target animal treatment	Score
Administration to individual animals to prevent or treat disease	1
Administration on a herd-wide or flock basis for disease treatment or specific disease prevention (for problem herds or when outbreak of disease has occurred)	10
Administration on a herd-wide or flock basis for production improvement or general disease prevention (e.g., coccidiosis)	100

2. *Factor 2—Residues of toxicological concern.* For this scoring factor, the agency assigns the number equal to the concentration in parts per billion of the total residue of toxicological concern occurring in the edible tissue that is the most efficient accumulator of residues in the target animals at the earliest time the animals

are expected to be marketable as food. Without total residue data, the sponsored compound will automatically be required to proceed to step 1 in proposed § 500.80(b)(1)(i).

Lacking information on the composition of the total residue in the edible tissues, the agency must assume that the total residue is of toxicological concern. The score value may be lowered if the sponsor gathers information on the composition of the total residue. For example, a sponsor may demonstrate that a portion of the total residue is a compound for which adequate studies have already been conducted to show that its presence as a residue is not of human health concern.

3. Factor 3—Potential toxicological significance. The values for scoring factor 3 reflect the agency's concern that the residues resulting from use of the sponsored compound are likely to cause cancer. The value will be obtained by taking into account available information concerning the potential toxicological activity of the residues themselves or of structurally related compounds, and compounds related by common physiological activity. The Commissioner recognizes that structure/activity relationships and the short-term biological tests discussed later have not been sufficiently developed to permit definitive predictions of carcinogenic activity (Refs. 13, 14, and 15). Nevertheless, the Commissioner believes that they can make a contribution to the threshold assessment.

In the following paragraphs, three sources of information on the basis of which the third factor is scored are discussed: (a) Structure/activity relationships; (b) short-term screening tests for carcinogenic potential; and (c) other biological, physiological, and pharmacological data.

The possible values for scoring factor 3 are 1, 10, and 100. A score of 100 is assigned if there is evidence from any of the three sources of information that raises a suspicion that the residue is carcinogenic. A score of 10 is assigned if short-term screening tests for carcinogenic potential have not been conducted and there is no basis for suspecting carcinogenic activity based on the other sources of data.

A score of 1 is assigned when a battery of short-term screening tests for carcinogenic potential has been conducted, when the results show no reason to suspect carcinogenesis, and when there is no suspicion of a carcinogenic potential raised by the other information sources.

(a) **Structure/activity assessment:** FDA maintains a list of structural characteristics that can be used as a guide in initially determining when, based on structure alone, there may be

concern about carcinogenic potential. The list includes all structural types for which one or more compounds have been shown to produce cancer in animals or man. Specific functional groups, e.g., aromatic nuclei, are included where there is evidence that these groups are the dominant influence in carcinogenic potential (Ref. 16).

Because new information is rapidly gathering in this area, the Commissioner expects the FDA list to be updated frequently and recognizes that this list is not exhaustive. An FDA committee on structure/activity relationships will provide an in-depth evaluation of substances with structural features found on the list before a final score is assigned.

(b) **Screening tests for carcinogens:** Evidence about the validity and utility of short-term in vitro tests as tools for regulating chemicals is growing rapidly. The Commissioner has concluded, however, that they cannot be used as the principal tool in assessing the safety of a compound. An appropriate battery of such tests can provide useful but not conclusive information about the safety of chemicals quickly, and at a reasonable cost. For these reasons, the Commissioner has included this section in the preamble as a guide to using these tests.

Currently, an appropriate battery of short-term tests includes both mammalian and nonmammalian test systems. The battery should test the ability of a sponsored compound to induce point mutations in two test systems that have been demonstrated to have a high correlation between detected mutagens and positive results in in vivo carcinogenesis bioassays. Systems that have shown this correlation include (1) point mutations in bacteria, (2) point mutations in the X-linked recessive lethal test in *Drosophila*, and (3) point mutations in mammalian cells in culture. Unscheduled DNA repair synthesis in mammalian cells in culture should also be included in the battery.

There is extensive literature correlating results in bacterial mutagenicity tests and carcinogenicity as determined by chronic toxicity studies (Refs. 17 through 20). This correlation is not perfect, and certain classes of carcinogens cannot be detected in mutagenicity assays.

The published data on mutations and DNA repair in eukaryotic cells are not as extensive as data concerning the Ames bacterial mutagenesis tests. The tests in mammalian cells appear to complement those in bacterial cells for the correlation of mutagenicity and carcinogenicity (Ref. 21). Testing in other systems is particularly important when the chemical is toxic to bacteria, as are many animal drugs, espe-

cially antibiotics. This toxicity will often make it impossible to test the chemical at a sufficiently high dose for negative results in bacterial tests to be meaningful.

All short-term tests for carcinogenicity should be performed separately in the presence, and in the absence, of a metabolic activation system, generally derived from rodent liver or the liver, or other relevant tissue, of the target animal. When appropriate, metabolites should be treated with glucuronidase and aryl sulfatase before testing.

Due to the rapid advances being made in the field (Refs. 22 through 34), it would be inappropriate for this proposal to prescribe or recommend detailed protocols for each general type of test. At the present time the most reliable, perhaps the best, results are obtained with the plate incorporation assay described by Ames (Ref. 22).

Application of the screening tests for scoring factor 3 requires some knowledge about the composition of the total residue to determine which residues should be subjected to the complete battery of tests. Although the sponsored compound should always be subjected to the complete battery of tests, for some or all metabolites it may sometimes suffice to perform less extensive testing, e.g., bacterial testing only. The sponsor should explain the reasons for selecting certain metabolites for testing and the reasons for not testing others. Similarly, use of an incomplete battery of tests should be explained. Factors such as structure and residue concentration in tissue should be addressed. In addition, a reduction in testing for any major metabolites should be justified based on factors such as the structural relationship to more extensively tested compounds.

Because of evidence that some structural classes of carcinogens may not yield a positive response in the short-term tests, there will be cases when results from such tests cannot be accepted.

(c) **Other biological and pharmacological data:** The sponsor should provide the results of a literature search on the sponsored compound and postulated metabolites. This search should also include relevant information on biological activity of structurally related compounds, particularly when very little information is available on the sponsored compound. The sponsor should also include and discuss any relevant information on the pharmacologic and physiologic activity, such as studies that may provide clues regarding the mode of action and expected toxicity. Frequently, in support of the investigational use for the chemical, the sponsor will have gathered some information on pharmacolo-

gic and physiologic activity and will also have developed subchronic test data in experimental animals, e.g., 90-day rodent and nonrodent studies. The data must be submitted for incorporation in the threshold assessment.

The foregoing types of information will be analyzed in the threshold assessment to identify any evidence suggesting that the sponsored compound or its expected metabolites is carcinogenic. This evidence will include findings of hyperplasia or of an abnormal proliferation of any type of cells. These findings lead to a suspicion of carcinogenic potential because such changes have frequently been shown to progress to cancer in studies of longer duration. Also, suspicion is raised by evidence of liver or kidney necrosis and evidence of the formation of regenerative nodules. Certain endometrial changes may also be indicative of possible preneoplastic effects (Ref. 35).

Other examples of biological information raising a suspicion of carcinogenic potential of a compound or its metabolites are binding to cellular nucleophiles, or an indication of the alteration of nucleic acid. Estrogenic compounds will be considered to be suspect carcinogens. Any compound that has the ability to disturb normal hormonal balance, a fact that may be known from pharmacologic studies, or that may be suspected from the organ effects observed in short-term toxicity studies, will be of carcinogenic concern.

4. Scoring system and the threshold decision. After the threshold assessment has been completed, each compound is assigned a scoring number that is determined by multiplying score factor 1 (use) times score factor 2 (amount of the residue) times score factor 3 (structure/biological activity). A compound with a score number above 1,000 raises enough concern about the potential contamination of food with carcinogenic residues that is must at least enter the first step of data collection specified by the regulations. The data collection process for a sponsored compound receiving a score equal to or less than 1,000 begins in accordance with the requirements (for risks other than cancer of the general safety provisions of the act. If, at any time after this data collection process begins, the data show that the risk of cancer is greater than that indicated by the threshold assessment score, the sponsored compound will become subject to these regulations.

Table V below shows the maximum concentrations of total residues of toxicological concern that could be found in the most efficient accumulator among the edible tissues and the corresponding scores of factors 1 and 3 that together would permit a spon-

sored compound to be exempt from the requirements of the regulation.

TABLE V—THRESHOLD ASSESSMENT*

Use (factor 1)	Residue maximum (factor 2) parts per billion	Structure/ biological activity (factor 3)
1.....	1,000	1
1.....	100	10
1.....	10	100
10.....	100	1
10.....	10	10
10.....	1	100
100.....	10	1
100.....	1	10
100.....	0.1	100

*Maximum concentration of total residue of toxicological concern that could be found in the most efficient accumulator among the edible tissues and the corresponding score of factors 1 and 3 that would permit sponsored compounds to be exempted from the regulations.

III. METABOLIC STUDY IN TARGET ANIMALS TO IDENTIFY RESIDUES OF CONCERN

A. NEED TO IDENTIFY RESIDUES IN EDIBLE TISSUES

Before any decision can be made concerning conditions of safe use of a sponsored compound, it is necessary to obtain information on the residues that occur in edible tissues when the compound is administered to the animals for which it is intended (target animals). Without such information, informed decisions about human safety regarding edible tissues derived from treated animals are not possible.

A substance administered to target animals is not necessarily the substance consumed by persons who eat the edible products of target animals. The enzymatic system or physiological fluids of an animal can act upon a compound administered to the animal and produce new compounds in the process (metabolites and degradation products of the sponsored compound). Therefore, the sponsored compound is not the only tissue residue of concern. Sections 512(b)(7) and 512(d)(2) of the act explicitly provide that, before approving its use, the Commissioner must consider the safety of any substance formed in or on food by a sponsored compound. The toxicity of substances derived from a sponsored compound (metabolites and degradation products) is not necessarily of the same magnitude and type as the toxicity of the parent compound, i.e., some metabolites may be considerably more toxic and some considerably less toxic (Refs. 36, 37, 38). Moreover, metabolites of the sponsored compound that were at one time considered "detoxification" products of the target animals (e.g., glutathione conjugates, mercapturic acid conjugates, and sulfates) actually may represent a hazard when consumed by humans (Ref. 38).

Numerous comments were received on the requirements of the 1973 and 1977 notices for metabolic studies. Several comments stated that no attention should be paid to metabolites. Other contended that metabolism studies should not be routinely required, on the ground that the pathway of excretion is of no toxicological importance if all the administered compound has been eliminated from the tissues of the target animal. Most comments recommended that a metabolism study be required only to determine the major metabolites in the edible tissue of target animals; they suggested that the public health would not be served if sponsors were required to pursue endless structural elucidations and quantitations of all metabolites even though some of them might constitute minor fractions of the total residue of the sponsored compound. Comments also contended that it may not be experimentally possible to administer to animals sufficient quantities of a compound to obtain adequate amounts of residues for structural identification. Several comments asserted that studies should be limited to identification of residues in the edible tissues of target animals and that generally it would be unnecessary to have this information on metabolites in inedible tissues. Further, some comments stated that radio-tracer studies can be employed to determine the time by which the sponsored compound and its metabolic products are eliminated ("out time"). However, many other comments suggested that all metabolites be identified and tested for toxicity.

The Commission reiterates that metabolic studies are necessary to assure that sufficient information on residues is collected to permit a food safety evaluation, which in turn can be used to establish criteria for regulatory assays. Therefore, the Commissioner has concluded that the metabolic studies discussed below in this preamble are necessary to determine whether the proposed use of a sponsored compound is safe. Also rejected are the arguments that the agency can consider, under the Delaney clause, only the carcinogenic potential of the sponsored (parent) compound. The Commissioner concludes that industry argument that metabolites of the sponsored compound are excluded from regulation under the Delaney clause and covered only by the general safety provisions of the act rests on a strained reading of the act, which ignores the language and purpose of the Delaney clause. A substance may properly be said to induce cancer when it or any substance which it may become through metabolism induces cancer. Consequently, in determining whether a substance induces cancer, it is appro-

priate—and in accordance with the congressional purpose of protecting the human food supply from added carcinogens—to examine metabolites as well as parent compounds.

Further, even if the Delaney clause were inapplicable to metabolites, the general safety standard would still apply, i.e., it imposes the same requirements that the Delaney clause imposes. So even if the industry argument were correct, it would not change the regulatory outcome. Nevertheless, the industry argument also illustrates that the general safety provisions encompass the anticancer clauses of the act. Assessment of a compound's safety requires a comprehensive examination of the sponsored compound and all of its metabolites and breakdown products. To the extent that the language in § 514.1 (21 CFR 514.1) implies a different view, the Commissioner is proposing to reword that regulation to correct any possible misunderstanding.

B. CONDUCT OF METABOLIC STUDY

1. *Test animals.* The metabolic fate of an administered compound in an animal may be unique for each livestock production class. Therefore, the Commissioner concludes that a metabolic study in the animals for which a sponsored compound is intended (target animals) is necessary. If the petitioner can demonstrate that the data from the metabolic study obtained for one production class are applicable to a second, the Commissioner may modify the extent of the investigation required for the latter.

2. *Required technology.* The metabolic fate of a compound administered to food-producing animals is pivotal in determining the need for and extent of carcinogenesis testing. It is mandatory that the metabolic fate be adequately determined. It is necessary that residues of potential carcinogenic significance have been detected at levels obtainable by the best analytical technology available. Therefore, the Commissioner concludes that the required metabolic studies must be conducted with the best analytical methods that technology provides.

As set forth in part VI of this preamble, one residue must be selected to serve as a practical indicator to assure that the "no-residue" standard of the act is met. This residue can be selected only by reference to a metabolic study in which residues are detected and measured at levels dictated by the outcome of actual carcinogenicity testing. Because these levels cannot be known at the outset of this phase of the metabolic study in target animals and because the "best available technology" may not be adequate to measure the levels dictated by the outcome of carcinogenicity testing, it may be nec-

essary to develop improved technology and to repeat the metabolic study in target animals after carcinogenicity testing has been completed. Another requirement of the second metabolic study will be the collection of enough data to construct tissue concentration-time profiles for some residues.

3. *Analytical techniques.* For the foreseeable future, the general technique of choice for metabolic studies will be the use of radiotracers. The proposed regulations, therefore, consistent with principles that assure scientific quality, recommend that the required metabolic studies be conducted with radiolabeled compounds of the highest specific activity available. These principles concern the types, the chemical nature, the chemical and metabolic stability, and the suitability of radiolabels for metabolic studies having specific objectives. The principles have been developed from past metabolic studies with radiotracers, and adherence to them ensures the scientific quality of the required metabolic studies (Refs. 39 and 40).

The task of residue detection can often be made easier by available information on the metabolism of related compounds. It is recommended that proposed metabolic pathways which appear applicable to the sponsored compound be based on relevant literature references about compounds of similar structure. This information can usually simplify the choice of radiolabel positions, which will ensure that all residues containing structural moieties of potential toxicological concern can be detected. However, these projections of likely metabolism can never be a substitute for experimental observation of the metabolic fate of the sponsored compound.

Although use of radiotracers is the preferred experimental procedure, some compounds possess inherent physicochemical characteristics (e.g., strong fluorescence associated with the structural moiety of potential toxicological significance) that will allow the necessary detection of residues. In such cases, the use of radiolabels may not be required.

4. *Dose regimen.* The dosing regimen for the metabolic study in the target animals must be consistent with the maximum proposed use level and duration of exposure to the sponsored compound. For compounds administered continuously over long periods of time, administration for the metabolic study need continue only until equilibration or saturation of edible tissues has been demonstrated. If tissue equilibration cannot be shown, the sponsor must show that the pattern of residues has stabilized.

The metabolic fate of a compound administered to target animals is likely to depend on the conditions

(level, method, and duration) of use (Refs. 41 and 42). Because the purpose of the required metabolic studies is to characterize and quantitate residues under conditions of proposed use, these conditions must be followed in the metabolic studies. However, it is possible that under these conditions certain residues are produced in amounts that do not allow extensive chemical characterization. If the structure of any such residues must be determined, and if sufficient amounts of residues can be produced by administering larger doses of the sponsored compound to target animals, the petitioner would be allowed to follow this procedure. In some instances, chemical synthesis of residues may be easier.

5. *Required date.* Because the relative persistence of residues in edible tissues (i.e., the likelihood that residues will be found in edible tissue) is one consideration in selecting specific residues for toxicity testing, the proposed regulations require that the total number and the relative quantities of residues be determined immediately following cessation of treatment, as well as at a sufficient number of intervals after the initial measurement to determine the depletion trend of individual residues. The number of these measurements needed to identify depletion trends depends upon the kinetics of depletion of the sponsored compound, and for this reason the complete extent of data collection cannot be specified in advance.

The need for, and extent of, chemical characterization of residues depends on a number of factors. Ordinarily, compounds constituting a significant fraction of the total residue require sufficient physical and chemical characterization to permit a determination of whether or not a structural change has taken place that could increase the carcinogenic potency of the residue over that expected of the sponsored compound, e.g., formation of epoxides from olefins, N-hydroxylation of aromatic amines, cyclization of hydroxyacids to suspect lactones (Refs. 14 and 15). In some instances, it may be impossible to judge whether the residue has carcinogenic potential, but sufficient structural alteration alone may be enough to establish the need for further characterization. Because these structural changes are common during metabolism and because it is the tissue residues to which human beings potentially will be exposed, this characterization will normally be required. When the agency determines that a component of the residue requires chronic toxicity testing (because of tissue concentration and persistence and/or expectation of increased carcinogenic potential), chemical characterization and an effort to obtain sufficient quantities of

the residue(s) for toxicity testing will be necessary. (See, however, section III.C., below.)

Residues that appear to become "bound" to tissue components (i.e., those whose rate of depletion appears to be no greater than the turnover rates of tissue components) cannot be automatically exempted from the requirements of the regulation. These residues may be hazardous to humans ingesting edible tissues. The residues can be identified by a variety of standard techniques (Refs. 44, 45, and 46). Of course, any such residue will be exempt from the regulation's requirements if it can be shown that it is a normal tissue constituent deriving from a metabolite of the sponsored compound that has entered normal pathways of intermediary metabolism of target animals (Ref. 43).

In some instances, a sponsor may be required to pursue the complete characterization of certain relatively minor metabolites if partial physiochemical characterization indicates that a structural change during metabolism in the target animal has introduced molecular moieties of carcinogenic potential greater than that expected of the sponsored compound, e.g., nitrosation of an amine of unknown carcinogenic potential to produce nitrosamines of known carcinogenic potential (Refs. 14 and 47).

Because uncharacterized tissue residues may pose a risk to public health, the proposed regulation would require that the procedures for separation, purification, characterization, and identification be consistent with the best available scientific and technological capabilities. Ordinarily, the agency will require attempts at characterization to include use of a variety of procedures based on the various forms of chromatography, spectroscopy, and spectrometry.

Allegations have been made that the regulations impose unreasonable requirements (i.e., that the regulations require inordinately complex, and therefore costly, experimental procedures) and that the information to be gained from these tests is not worth the costs of gathering it. Both allegations either ignore the current state of these sciences or misunderstand the requirements of the proposed regulations. All the procedures described in the proposal are standard techniques that are widely used in basic biochemistry and pharmacology investigations. A few comments showed confusion about the requirements associated with the metabolite identification study. To correct any potential misunderstanding, the Commissioner has eliminated the earlier requirement that all residues of the sponsored compound be identified until the sponsored compound has been depleted for

three half-lives in the target animals. A safety assessment requires information on the trends of residue depletion in the target animal's tissues. Therefore, the Commissioner proposes to substitute the requirement that residues be identified at sufficient intervals to permit determination of the trends of depletion of individual tissue residues.

6. *Format for data submission.* The Commissioner has concluded that the format for presenting results of metabolic studies should be standardized to minimize the possibility of misinterpreting the data. Because these studies will be the basis for major public health decisions, the Commissioner considers it essential that they be carried out and reported in keeping with the best available criteria. The two professional societies listed in the proposed regulations (American Chemical Society and American Society of Biological Chemists) follow policies for accepting manuscripts that embody the best available criteria for collecting, interpreting, and reporting scientific data of the type required by this regulation.

C. COMPARATIVE METABOLISM STUDY TO AID IN ASSESSING CARCINOGENICITY OF INTRACTABLE RESIDUES

1. *Sponsored compound always tested: rationale and procedure.* The sponsored compound itself must always be tested for carcinogenesis when it is determined on the basis of the threshold assessment and the initial metabolism study required by the regulation that a sponsored compound has the potential to contaminate edible tissues with residues whose consumption may pose a human risk of carcinogenesis. Even if the sponsored compound is not detected among the residues, there are compelling reasons for testing the sponsored compound in addition to testing any residues identified according to the criteria already discussed in section III.B above. Metabolic transformation or nonenzymatic degradation of a sponsored compound can lead to a number of tissue residues that cannot be obtained (either by isolation or synthesis) in sufficient amounts for carcinogenicity testing. (These residues are referred to in this document as "intractable residues.") Testing the sponsored compound itself, therefore, provides an experimental means for acquiring data bearing on the carcinogenic potential of such residues.

Although the dominant criterion for selecting test animal species or strains for chronic toxicity testing will be the degree to which a species or strain models man, applying a secondary criterion for selection can help to address the problem of intractable residues. Specifically selection of test animals

can also be based on comparative metabolism data (target animal versus test animal). These data can be used to determine the extent to which particular species or strains, due to the way they metabolically convert the sponsored compound, will be exposed during testing to the same complement of residues to which man may be exposed in tissues derived from target animals.

For example, if a metabolite detected as a residue in edible tissues of the target animal is determined to be toxicologically important, the sponsor will be asked to isolate or synthesize the compound for purposes of toxicity testing. If all such attempts fail, then the comparative metabolism approach is available if a potential test animal species, when administered the sponsored compound, is shown to produce the same metabolite. There is thus some assurance that the toxicity test of the sponsored compound also provides an estimate of the toxicity of the intractable metabolite. Because human food could be contaminated with the intractable metabolite, this test is a practical approach to a complex and important issue.

This construct was included in the February 1977 notice in response to comments that either suggested that all metabolites ought to be ignored (which the Commissioner concludes is neither legally nor scientifically acceptable) or that all metabolites must be isolated and independently tested (which is not always possible, for technical reasons). Further, the Commissioner invited additional comment on this construct.

Comments on the use of comparative metabolism to deal with intractable residues addressed several points: the definition of "intractable residues," the criteria for determining whether a test species will produce the same complement of intractable residues as the target animals, the basis for treating tractable and intractable residues differently for chronic testing, and the potential use of "relay" toxicity testing.

One comment misinterpreted the definition of "intractable residues." It suggested that they are substances about which nothing is known. The regulation, however, proposes to define the term "intractable residues" as those that either cannot be isolated from biological material or cannot be synthesized for purposes of further testing. The experiments that will already have been conducted for determining the presence of intractable residues (e.g., chromatographic and spectroscopic experiments) will furnish considerable information about the physical and chemical characteristics of the residues. Accordingly, basic techniques of biochemistry and phar-

macology can determine whether the test animal species will be exposed to the same complement of residues that appear in the target animals' tissues. These techniques will ordinarily supply enough information to make such an evaluation. Therefore, the Commissioner concludes that the comparative metabolism studies have merit for the purpose of dealing with intractable residues.

The Commissioner established a series of requirements that can be satisfied by different experimental techniques having varying degrees of rigor. To avoid multiple interpretations of the same set of experimental observations, the Commissioner concluded that there must be established an additional general requirement that the experimental technique with the greatest degree of rigor be the one used for metabolic studies, and the agency adopted the term "best available technology" to describe this requirement. Thus, if the nature of residues can be determined by ultraviolet spectroscopy (a method of very low specificity) or by mass spectrometry (a method of high specificity) the Commissioner will require the use of the mass spectrometric method.

The Commissioner rejects the suggestion that all compounds be treated as the intractable residues are. Animal bioassay of specific metabolites is the best method of determining potential for chronic toxicity, and the Commissioner would prefer to have all metabolites chronically tested. However, recognizing the limitations of organic synthesis, separation sciences, and facilities available to conduct long-term bioassays in animals, the Commissioner has settled for using comparative metabolism for safety assessment of those residues requiring the application of techniques beyond the bounds of the best available technology. Nevertheless, sponsors will be held to the task of conducting the best type of toxicity study for selected residues that are susceptible to identification and isolation, or synthesis, by the best available technology. Although deeming it essential that sponsors pursue those goals with the best science and technology available, the Commissioner recognizes that the somewhat less than ideal toxicity assessment rendered by the comparative metabolism approach is useful for intractable residues. This position is a reasonable balance between completely ignoring all intractable residues and requiring their pursuit in the absence of the necessary technology.

One comment suggested feeding to test animals the contaminated tissues from treated target animals to assess the safety of residues to which humans will be exposed ("relay" toxicity testing). The Commissioner rejects

using relay testing because it has two important limitations. Practical animal testing is limited to a relatively small number of animals as surrogates for the entire human population, and the only way to overcome the known limitations of such bioassays is to feed the small number of animals levels of the test compounds that are far in excess of the levels of animal drug residues to which humans are expected to be exposed. Because tissues of animals do not contain residue levels sufficiently high to compensate for the known limitations of standard bioassays and because they therefore are not a suitable basis for evaluating the residue's carcinogenic potency, as that term is used in this notice, the Commissioner must reject the use of relay toxicity testing. Further, the direct use of tissues from treated animals as test material does not permit determining which, if any, specific residues are responsible for the observed effects and the contribution of the residues to the effects.

Data collected according to the procedures and criteria above will: (i) Establish the number of metabolites in target animals and in a number of species/strains of test animals; (ii) provide information about the chemical structure of these metabolites (the structure of some metabolites will be known completely although for others only partial information will be available); (iii) provide information about the persistence of these metabolites in tissues; and (iv) provide information about their mutagenic, cell transformation, or their DNA damage potentialities. This information will permit FDA to classify the residues into the tractable and intractable categories, to select from the category of tractable residues those that must be subjected to chronic toxicity testing, and to document this selection. Criteria for classifying residues into the tractable and intractable categories were discussed earlier. Criteria for selecting tractable residues for chronic toxicity testing will be discussed in turn below.

First, it is unnecessary to require that all tractable residues be subjected to chronic toxicity testing. Most often, judicious use of well-established biochemical knowledge will eliminate the need for such extensive testing. A good estimate of the carcinogenic potential of the sponsored compound and its metabolites can be obtained without testing each of the tractable metabolites.

Ordinarily, xenobiotics are metabolically transformed by target animals, test animals, and man in sequences of enzyme-catalyzed reactions, with considerable interspecies similarities (Ref. 48). The described metabolic studies, especially the studies in comparative metabolism, will provide significant in-

formation about these reaction sequences and their interspecies similarities.

It is obviously unnecessary to subject to independent chronic toxicity testing intermediates in sequences that are reasonable expected to be similar in man and the selected species of test animals, and which also are residues in target animal tissues. Testing the leading substrate of each sequence will be sufficient. Tractable residues in target animals that are not produced by the selected test animal species must be tested independently in the absence of information that they are not carcinogenic.

Finally, to estimate reasonably the carcinogenic potential of the sponsored compound and its metabolites in target animal tissues, one must eliminate the confounding effects of metabolites or sequences of biotransformation reactions unique to the chosen test animal species. These metabolites, if present, could be subjected to short-term tests (mutagenicity, cell transformation, or DNA repair) to assess their inherent potential to produce irreversible effects when in intimate contact with tissues and tissue components. Negative findings would eliminate these residues from further consideration as factors likely to confound the results of bioassays. Further, if these residues are known or expected to be common to the chosen test animals and man, negative findings would eliminate them from the residues of toxicological (in this instance carcinogenic) concern. On the other hand, a positive finding would be a clear indication that they are prime candidates as the causative agents of adverse findings in test animals.

2. Selection of residues for chronic toxicity testing. Based on all the studies described above, the Commissioner will select those residues, in addition to the sponsored compound, that require chronic toxicity testing.

IV. CHRONIC TOXICITY TESTING

The sponsored compound and any residues selected for testing must be subjected to oral, lifetime, dose-response studies in two of the test animal species strains selected under the criteria described in the foregoing paragraphs. The purpose of these studies is to determine whether the compounds under test are carcinogenic and, if so, to establish the lowest limit of reliable measurement that must be achieved by any regulatory assay for monitoring residues resulting from use of the sponsored compound.

Several comments on this feature dealt with testing chemical compounds for carcinogenic potential, and addressed two major issues: (i) The design of chronic studies, and (ii) the

relevance of animal testing in evaluating human safety.

A. DESIGN OF CARCINOGENICITY STUDIES

Comments on the proposal and the notice expressed contrasting opinions on the design features of carcinogenicity studies with experimental animals. The comments specifically addressed: (i) Selection of appropriate test animals; (ii) conditions, levels, and duration of exposure; (iii) statistical design as it relates to number of animals assigned to the various levels of exposure; and (iv) the adequacy of controls.

The impact of these design features on interpreting animal carcinogenesis data is an important and controversial matter currently under intense scientific investigation. The major effort at FDA's National Center for Toxicological Research (NCTR) is specifically aimed at developing relevant protocols and experimental designs for carcinogenicity testing. The agency has also begun to work on supplementing the NCTR effort within the Interagency Regulatory Liaison Group (IRLG). Until these efforts are concluded and the results incorporated into regulations or into official publications, the Commissioner recommends as guidance the report of the Food and Drug Advisory Committee on Protocols for Safety Evaluation: Panel on Carcinogenesis, Report on Cancer Testing in the Safety Evaluation of Food Additives and Pesticides ("Toxicology and Applied Pharmacology," 20:419-438, 1971). This report reviews and analyzes all facets of experimental design that have been developed and scrutinized by competent scientists before 1971. To facilitate incorporating later developments in testing standards as they evolve, the proposed regulations suggest that petitioners submit developed protocols to the Commissioner for review and updating before initiating studies.

B. RELEVANCE OF ANIMAL TESTING IN EVALUATING POTENTIAL FOR HUMAN CARCINOGENESIS

Several comments on this aspect of the regulation dealt with the merits and shortcomings of animal testing as an experimental tool. Some comments pointed out that even animal testing using the best experimental protocols can never prove conclusively that a compound is not carcinogenic, and that under these circumstances some weak carcinogens may escape identification. Other comments expressed the contrasting view that adequate protocols can be devised. Still others questioned the propriety of drawing conclusions about human carcinogenesis from data collected with experimental animals. Additional comments of the same type were received on these

issues after the February 1977 notice. None of these comments provided any evidence or argument that persuades the Commissioner to revise any provision of this part of the regulations. Several comments suggested using short-term in vitro tests, singly or as part of a tiered testing system, as a substitute for long-term toxicity testing. One comment stated that the regulation should apply only to directly acting carcinogens and that indirectly acting carcinogens should be treated differently.

The act requires that in assessing the safety of animal drugs the carcinogenic potential of residues be evaluated. Ordinarily, the evaluation must be based on appropriate testing. Given the gravity of the decisions that depend on the results of these evaluations, the most relevant scientific information must be collected. As a source of information, direct carcinogenesis testing of chemical compounds in man is and must remain beyond the ethical bounds placed by society on human experimentation. Without this information source, which would be the most relevant, alternative sources are human epidemiology studies and animal experimentation. Human epidemiology may provide post facto information about the carcinogenic effects of chemical compounds on man. However, this experience cannot be the central basis for food safety valuations for several reasons, including the inherent imprecision of human epidemiology and the same ethical objections that make direct experimentation in man unacceptable.

There may be a high degree of confidence that a compound found to be a carcinogen in an epidemiology study is a human carcinogen because no interspecies extrapolation is required. However, so-called "negative" epidemiology data (data not showing carcinogenesis associated with a substance) are generally inadequate to overcome positive evidence of carcinogenesis from an animal study. Sources of data are often inadequate for identifying a specific exposed human population. Human beings are exposed to multiple potential carcinogens, and it is difficult or impossible to distinguish their several effects. Moreover, the precise amount of human exposure to particular substances is rarely known. Thus, limitations on the use of epidemiology data include (1) the degree to which the study population can be defined in terms of potential exposure, number exposed to the suspected risk, and the length of the observation intervals, (2) the degree to which the "standard" population used as the control is comparable to the study population, and (3) the role of other factors that might be related to different carcinogenic responses. Further, seldom are

there sufficient numbers of subjects available to permit broad-scale conclusions.

The degree to which study populations can be characterized by the level of exposure to specific carcinogens will ordinarily vary considerably because of the lack of measurement in the early years of exposure. Comparison of exposed populations requires contrasting morbidity and mortality statistics of a target population with those of a "standard" population. However, the validity of any conclusion reached from these comparisons depends upon the extent to which other variables related to cancer incidence can be matched, adjusted, or accounted for in the analysis. These controls on data are costly, time consuming, and fraught with imprecision. Finally, detailed human pathology, which is important in demonstrating the role of specific carcinogens in the induction of rare tumors, is seldom available.

The Commissioner therefore concludes that the agency must continue to rely on animal testing for evaluating the safety for humans of chemical compounds proposed for use in food-producing animals. Extensive evidence substantiates this view (Refs. 13, 49, and 50). Consequently, the use of animal tests is generally recognized and accepted by regulatory agencies as the principal basis for assessing potential risks from exposure to chemicals (Refs. 51, 52, and 53). This basis has been universally recognized and accepted by the courts (see e.g., *EDF v. EPA*, 510 F. 2d 1292 (D.C. Cir. 1975)). Moreover, the act does not distinguish between human carcinogens and compounds demonstrated to be carcinogenic in test animals. Instead, it assumes that an animal carcinogen presents an unacceptable risk of cancer in human beings. In this context, the issue of relevance to man of data from tests in animals must be refocused. In view of the strong policy in the general safety provisions of the act, which includes the Delaney clause, the primary regulatory objective must be to avoid falsely negative determinations of the carcinogenic potential of compounds under test in experimental animals. In this setting, the agency's only tenable regulatory posture is to select bioassay protocols that utilize test animal species/strains that are considered the best surrogates for man. The selection is based on available toxicologic and metabolic information.

Numerous terms are used to describe various proposed mechanisms of induction of chemical carcinogenesis, e.g., direct carcinogens, indirect carcinogens, promoter, initiators, cocarcinogens. The current knowledge of the mechanism of chemical induction of cancer is generally not adequate to

permit these subtle distinctions. Further, the types of scientific studies necessary to identify precise modes of action for specific carcinogens are not yet refined to the point that they can be commonly applied (Ref. 54).

Moreover, the act does not distinguish between so-called "direct" and "indirect" carcinogens, and all types (assuming they are experimentally distinguishable) pose the same kinds of health risk to the public—namely, the risk of human cancer—that the act seeks to prevent. Therefore, the Commissioner concludes that there is generally no scientific basis for making regulatory distinctions among carcinogens.

The Commissioner agrees that short-term *in vitro* tests have a place in assessing the carcinogenicity of chemicals, as described in the preceding sections of this preamble, when they are intelligently applied and interpreted. However, the Commissioner does not agree that these tests can now substitute for long-term bioassays. The reasons for this conclusion were articulated by the expert committee of the National Cancer Institute on the use of these tests (Ref. 13).

At present, none of the short-term tests can be used to establish whether a compound will or will not be carcinogenic in humans or experimental animals. Positive results obtained in these systems suggest extensive testing of the agent in long-term animal bioassays, particularly if there are other reasons for testing. Negative results in a short-term test, however, do not establish the safety of the agent.

C. INTERPRETATION OF TEST DATA—IS THE COMPOUND A CARCINOGEN?

The majority of comments on the February 1977 notice requested greater specificity concerning classification of sponsored compounds as carcinogens, potential or suspect carcinogens, and noncarcinogens.

The objective of collecting and interpreting test data is to decide whether or not the compounds under test (the sponsored compound and any selected metabolites) are carcinogens. Within certain limits of confidence, statistical treatment of chemical carcinogenesis data can provide objective criteria for such determinations. To the question "Is the tested compound a test-animal carcinogen?" statistics can supply one of two types of answer:

(i) With "x" percent confidence (i.e., in "x" cases out of 100), "y" dose of the test compound will increase the carcinogenesis risk of test-animals over controls by no more than "s" and no less than "t"; or

(ii) With "x" percent confidence, "y" dose of the test compound will increase the carcinogenesis risk of test animals over controls by not more than "s."

An answer of the first type is possible only when the observed incidence of carcinogenesis in the test animals is significantly greater than that in the controls. When the observed incidence is the same for test and control animals, only an answer of the second type is possible.

A statistically significant increase in the incidence of carcinogenesis in one species or strain of test animals (i.e., an answer of the first type) is sufficient evidence to classify the test compound as a test-animal carcinogen. Because, for the purpose of these regulations, the act does not distinguish between human and animal carcinogens, a test compound as a test-animal carcinogen brings into play the requirements of the anticancer clause.

If the animal test data will permit only an answer of the type, the decision whether to classify the test compound as a test-animal carcinogen is more difficult. A negative test finding, as pointed out in some comments, can mean either that the test compound is not a test-animal carcinogen or that the bioassay protocol lacks a sufficient number of animals to discern an increase in the risk of carcinogenesis in the test animals. In those cases, a decision must be made whether to classify a tested compound as a noncarcinogen or to require further experimentation appropriate for resolving questions of safety. The Commissioner will conclude that a sponsored compound is not a carcinogen if the sponsored compound and each of the tested metabolites yields negative results. For purposes of these regulations, the Commissioner is proposing that the absence of a significant increase in tumor incidence in each of two different animal bioassays, conducted in accordance with good laboratory practices and designed according to principles referenced above, is (in the absence of other, positive data) sufficient evidence of noncarcinogenicity.

V. OPERATIONAL DEFINITION OF THE NO-RESIDUE REQUIREMENT

A. ALTERNATE OPERATIONAL DEFINITIONS

If it has been determined that a sponsored compound when administered to food-producing animals has the potential to contaminate edible tissue with residues whose consumption may pose a risk to human carcinogenesis, the agency cannot approve the sponsored compound unless it can be demonstrated that conditions of use can be established that ensure that the no-residue requirement of the act will be met. To establish those conditions of use and to provide a means for ascertaining whether these conditions are met in actual practice, some operational definition of "no residue" is necessary. Indeed, the act contemplates that the Commissioner will provide

such operational definition, for there must be some criteria for prescribing or approving methods of examination for measuring residues.

The Commissioner has considered three basic alternative approaches to an operational definition of the phrase. Under one approach, the term "no residue" might be operationally defined as satisfied when the levels of residues fall below those that can be measured by available analytical methodology (alternative 1). A second approach would be to establish some low finite level (e.g., 1 part per billion) as a "practical zero" and to require assays that can reliably measure this zero, and to insist on the development of new assays if available assays are not adequate (alternative 2). Finally, "no residue" might be operationally defined on the basis of quantitative carcinogenicity testing of residues and the extrapolation of test data using one of a number of available procedures to arrive at levels that are safe in the total diet of test animals and that would, if they occurred, be considered safe in the total of man. Under this approach, the Commissioner would require assays that can reliably measure that safe level in edible tissues (alternative 3). For the reasons discussed in section V.B. below in this preamble, the Commissioner has concluded that alternative 3 should be adopted. The results of the carcinogenicity testing of the sponsored compound and any selected residues will be treated by the statistical procedures described in section V.

B. CHOICE OF AN OPERATIONAL DEFINITION

1. *Alternative one.* A number of assays might be developed to measure the concentration of a chemical compound (i.e., residue) in an edible tissue, but for each there would be some level below which the compound under analysis could not be measured. (See section I.B. of this preamble.) Generally, different assays for the same chemical compound will have different, and sometimes vastly different, lowest limits of measurement. The no-residue requirement of the act could be translated an operational definition that is based solely on available analytical methodology and specifically on the lowest limit of measurement of an available assay. Thus, the degree of public risk associated with the use of a sponsored compound would become a function solely of the capability of available analytical technology.

The Commissioner concludes that this approach is unsound because it ignores all quantitative aspects of carcinogenicity testing. The carcinogenic potency of different chemicals varies widely. As used in this document, the

term "potency" refers to the dose required to produce a given rate of cancer. Disregard of "potency" in developing criteria for evaluating sponsored compounds would scientifically unsound, and would make no sense from the perspective of public health protection in accordance with the Delaney clause and the general safety provisions. Such disregard would produce situations in which residues of different compounds could present widely varying risks. The regulatory assays selected that way would not represent a consistent policy of protecting the human food supply from cancer risks. Indeed, the pattern of protection from one compound to another would be haphazard.

2. *Alternative two.* A second approach that the Commissioner considered was to establish a "practical zero" for the residues of all carcinogens. This approach would have one advantage over alternative one; it would provide a well-defined criterion for the lowest limit of measurement that any sponsor's assay would have to satisfy. This approach also would not, however, take into account differences in carcinogenic "potency" among various carcinogens. (See Table III.) Therefore, it is unacceptable for the same as alternative one. Unless the "practical zero" were set at the level appropriate for the most "potent" carcinogen, it would provide insufficient protection; but if it were set at that level, it might be unnecessarily stringent for carcinogens that produce a response that is of a lower magnitude. In sum, no one "practical zero" is appropriate for all carcinogens.

Moreover, under alternative two, the criterion for lowest limit of measurement probably would reflect consideration of what lowest level of measurement is "practical," given the state of the art analytical chemistry or biochemistry. In addition to failing to link the no-residue standard to any consideration of carcinogenic potency, this approach fails on the ground of practicality. The science and technology of analytical chemistry and biochemistry are continuously changing, and a lowest limit of measurement considered reasonable at one time would have to be discarded as unreasonable at a later time. Whenever a new and lower criterion for the limit of measurement would be established, the Commissioner would then presumably require that use of all compounds approved under the prior criterion be suspended until methods were developed to measure the residues at this lower level. Such a situation, in the Commissioner's judgment, would be both unreasonable and unmanageable.

On the other hand, to disregard advances in analytical chemistry and adhere to a previously established

practical lowest level of reliable measurement with no public health rationale for doing so would be contrary to the statutory purpose and, ultimately, arbitrary and capricious.

A modification of the basic "practical zero" also has been suggested, i.e., that Congress intended FDA to adopt a practical zero set at the level of analytical technology at the time the various Delaney clauses were adopted. Under this theory for food additives, the practical zero would be set at the level of technology in 1958; the DES proviso would be governed by the level of technology in 1962; and new animal drugs, by the level in 1968. This uneven floor of technology is inappropriate not only for the reasons that make any "practical zero" level inappropriate, but also because it would be impossible for the agency to administer and has no basis in the policy or legislative history of the various amendments to the act.

3. *Alternative three.* A third approach to defining operationally the no-residue requirement is to establish a required lowest limit of measurement for each sponsored compound on the basis of data derived from measurements of the carcinogenic response resulting from various amounts of the compound itself or selected metabolites (Dose-response studies). A result of the increasing understanding of chemical carcinogenesis is that the question asked is no longer merely whether a substance is a carcinogen, but what is the amount required to produce a given incidence of cancer (Ref. 55). This concept of a dose-response relationship has long been used in medicine to determine safe and effective doses of therapeutic agents. It is customarily used to describe the commonplace observation that in the majority of cases, different quantities of two different pharmacological agents are needed to elicit the same pharmacological effect (relative potency) (Ref. 56).

Both pharmacological effects and carcinogenic effects are biological effects, and there is no a priori reason why the concept of relative potency should apply to the former but not to the latter. Carcinogenesis bioassays of increasing refinement conducted over the last 20 or so years have borne out this notion of relative potency for carcinogens. Thus, scientists ever more frequently speak of weak and strong carcinogens. In doing so, they express what is implied by the observation, for example, that dietary exposure to comparatively small amounts of 2-acetylaminofluorene causes bladder cancer in rodents at the same rate as does exposure to comparatively large dietary amounts of saccharin. Under this approach, relative carcinogenic potency is given specific consideration

because actual chronic toxicity test data are used to determine the level of residues in edible tissue that an assay must be capable of measuring reliably. Thus, it permits a rational, uniform procedure for establishing the required lowest limit of measurement for assays and avoids the major deficiencies inherent in alternatives one and two. This approach directly carries out the statutory purpose of protecting the human food supply from residues that pose a carcinogenic risk to man.

Should new information develop on the dose-response relationship between the level of residues of a sponsored compound and the incidence of cancer, this approach would provide a practical basis for determining whether a new assay is required to establish compliance with the no-residue standard. Thus, this approach contributes to regulatory stability and predictability. Likewise, the Commissioner can provide the maximum public health protection based on quantitative carcinogenesis data. For these reasons, the Commissioner concludes that alternative three is the most appropriate means for implementing the statute and the most rational approach to developing an operational definition of "no residue."

By adopting this approach to implementing the no-residue standard, the Commissioner has assumed that: (i) The dose-response relationship between chemical compounds and carcinogenesis can be quantified, and (ii) a dietary level of a carcinogen can be identified at which no significant human risk of carcinogenesis would derive from consuming food containing residues below this level.

The dose-response relationships between compounds and carcinogenesis can be determined by testing in experimental animals, although the determinations are subject to known limitations inherent in every measuring device or system (Ref. 11). The second assumption, that residue levels representing no significant human risk of carcinogenesis can be assigned, protects the public from the potential and real dangers inherent in the interpretations of the "no-residue" standard of the act discussed as alternatives one and two. This second assumption and related issues are fully discussed in the next section of this preamble.

C. ANALYSIS OF ANIMAL CARCINOGENESIS DATA TO DEFINE OPERATIONALLY THE "NO RESIDUE" STANDARD OF THE ACT.

1. *Introduction.* The 1973 proposal included a modified version of the extrapolation procedure of Mantel and Bryan 1961 for use in defining the "no residue" standard for a sponsored compound (Refs. 57 and 58). The 1977 notice adopted a modified version of

the Mantel et al. 1975 procedure, which updated the 1961 procedure. The basic Mantel-Bryan procedure is one of several statistical techniques that allow estimation of the level, or dose, of a carcinogen that would lead to cancer rates in test animals well below detectable rates in practical experimentation. In normal experiments in which test animals are administered various levels (doses) of a suspected carcinogen, the observed responses (i.e., the percentage of test animals developing cancer if the compound is a carcinogen) usually range from about 5 percent to 95 percent. To observe responses at rates less than about 5 percent would require many test animals. Experiments designed to observe responses in the range of interest in establishing the "no residue" standard would require impossibly large populations of test animals. Therefore, the procedures of Mantel and Bryan and Mantel et al., as modified, were proposed respectively to be used in the statistical treatment of the dose-response data from actual experimentation to estimate the dose of the compound under test that would result in lifetime test-animal cancer rates no higher than a preselected rate.

Some operational zero must be defined in order for the "no residue" requirement of the act to be implemented. Regardless of the arguments for or against any particular procedure, the Commissioner maintains that the use of some procedure that quantitatively takes into account the carcinogenic potency of substances in test animals is far superior to any approach that fails to take that fact into account.

The modified Mantel-Bryan procedure described in the 1973 proposal was labeled excessively conservative (i.e., too protective of the public health) by some comments and recklessly liberal (i.e., insufficiently protective of the public health) by others. Those who considered the procedure too conservative objected to the proposed use of a series of conservative assumptions (shallow-slope dose-response relations, low acceptable level of risk, use of upper 99 percent confidence limits, etc.) and contended that any one of these assumptions alone could provide adequate public health protection. Further, these comments argued that the practical application of the procedure had not been demonstrated, and suggested that it would prohibit the use of many valuable compounds.

Persons who considered the procedure too liberal objected to the proposed use of a lower confidence limit on the observed slope of the dose-response curve. They protested that the proposed statistical technique for extrapolating dose-response data obtained from animal tests seriously un-

derestimated public risk. The technique provides a basis for establishing a dose level where there is no significant human risk of cancer, thereby establishing a criterion for a residue detection method. Specifically, the comments contended that if the true dose-response follows a logistic or linear distribution, extrapolation with the slope from a probit transformation would seriously underestimate public risk. Further, these comments argued that the probit transformation leads to a paradox because strong carcinogens are treated less conservatively than weak ones.

2. *Choice of the statistical procedure.* Most of the comments concerning the statistical procedure proposed in 1973 favored adoption of the Mantel-Bryan procedure without the modifications suggested in the proposal. A smaller number of comments contended that a linear extrapolation would be better than the Mantel-Bryan procedure and even fewer suggested the logistic or the angle distributions. Still other comments suggested that FDA require a comparative analysis of animal carcinogenesis data employing all alternative distributions, and that the smallest estimate of the "safe" level be used to define the "no-residue" standard for a compound. Finally, some comments stated that, although the logistic and angle distributions have been used in biological sciences, there is no indication that either one provides advantages over the probit (Mantel-Bryan) or the linear distribution, and that, therefore, neither is appropriate for regulatory purposes.

Some comments favoring the Mantel-Bryan procedure argued that it has a theoretical rationale that probably is relevant to the carcinogenic action of chemical agents. A similar argument was made by some of the comments favoring linear extrapolation. These comments also contended that linear extrapolation has the public health advantage of being the most conservative of all procedures.

In the period 1973 through 1977, the Commissioner extensively reviewed the known procedures that may be used to derive an operational definition of the no-residue standards of the act from animal carcinogenesis data. This review persuaded the Commissioner that the same scientific and technical limitations are common to all. Specifically, because the mechanism of chemical carcinogenesis is not sufficiently understood, none of the procedures has a fully adequate biological rationale. All require extrapolation of risk-dose relations from responses in the observable range to that segment of the dose-response curve where the responses are not observable. Matters are further complicated by the fact that the risk-dose re-

lations assumed by the various procedures are practically indistinguishable in the observable range of risk (5 percent to 95 percent incidence) but diverge substantially in their projections of risks in the unobservable range.

In the 1977 notice, the Commissioner concluded that the comments failed to demonstrate that another procedure was superior to that of Mantel and Bryan and Mantel et al., and the Commissioner therefore adopted it with some modifications. Moreover, the Commissioner concluded that some aspects of the Mantel-Bryan procedure offered advantages over the other statistical procedures. It provided a means for pooling data from multiple experiments and from multiple dose levels within a single experiment, and thus permitted decisions based on the fullest use of available data. Further, the Mantel-Bryan procedure had a defined mechanism for handling the spontaneous tumor rate. To overcome certain limitations of the Mantel-Bryan procedure, the Commissioner adopted a number of modifications, which were described and discussed in the 1977 notice. The Commissioner also concluded that a review of the decision should be undertaken in 2 years and any appropriate modifications in the regulation initiated.

Since publication of the February 1977 notice, the Commissioner has received many additional comments on the statistical procedure chosen. Several suggested that the adopted Mantel-Bryan procedure is very complicated and requires a sophisticated computer program for handling and analyzing data and that such programs are not widely available. Also, a comment stated that the procedure uses a relatively untried mathematical theorem and applies it in a fashion for which it was never intended. Another comment contended that the Mantel-Bryan procedure is "disturbing" in that, for certain sets of data, it is possible that different answers will be produced by different starting points in the computer iteration, i.e., there may be an infinite number of possible answers. A comment stated that neither Mantel paper was published in a recognized statistical journal, and, therefore, that the papers have not been subjected to proper peer review. Another comment argued that the procedure is based on unwarranted assumptions. Other comments suggested that the procedure is too lenient, and several suggested use of the linear procedure for extrapolation. Finally, another comment recommended the use of the Hartley-Sielken procedure (Ref. 59) and contended that this procedure "has never been challenged."

In light of these comments, the Commissioner reexamined alternative statistical procedures for estimating

test animal exposure levels that correspond to specified levels of risk. None of the procedures suggested in the comments is known to be entirely compatible with current knowledge about chemical carcinogenesis. The procedure chosen must be that best supported by current science and also most protective of the public health. Of the three general procedures recommended by the comments or available in the literature (the curvilinear models, linear extrapolation and the Mantel and Bryan procedure (Refs. 57 through 63)), the Commissioner has now decided that for purposes of this regulation, linear extrapolation best meets the above criteria:

(1) Of the available procedures, the linear procedure is least likely to underestimate risk. That is, at the level of acceptable risk (1 in 1 million over a lifetime), the maximum permissible dose of residues calculated by use of the linear extrapolation is usually lower than that obtained by the use of the other procedures.

(2) Linear extrapolation does not require the use of complicated mathematical procedures and can be carried out without the aid of complex computer programs. The Commissioner now agrees with those comments suggesting that the Mantel-Bryan procedure is, for such reasons, unsatisfactory. The curvilinear model of Hartley and Sielken (1977) and Crump et al. (1977), like the Mantel-Bryan procedure, have many computational difficulties and require data from several dose levels.

(3) No arbitrary selection of slope is required to carry out linear extrapolation. For this reason, the Commissioner believes that it possesses an operational advantage over the Mantel-Bryan procedure; again, the Commissioner agrees with those comments that pointed out this difficulty in the previously proposed procedure.

(4) an approach to risk estimation recently proposed by Cornfield (Ref. 64) has been suggested to the Commissioner. Although Cornfield's approach may have merit, its assumptions and concepts have not yet been sufficiently scrutinized, evaluated, and accepted for the agency to adopt it at this time, as illustrated by the recent discussion in *Science* (Ref. 64).

(5) Finally, the Commissioner has accepted the recommendations contained in a report issued by an expert scientific committee of the Department of Health, Education, and Welfare (Ref. 63). Linear extrapolation was proposed as the procedure of choice by the members of this committee.

For the above reasons the Commissioner now proposes to adopt linear extrapolation for regulating compounds subject to these regulations. The Commissioner recognizes that al-

ternative procedures may have merit. Accordingly, comments are solicited on the property of those alternative procedures and what is believed to be their advantages over the proposed linear procedure. Of particular interest is the applicability of the curvilinear procedures to an interpretation of data on time-to-tumor observations.

3. *Time-to-tumor and other considerations.* Several comments contended that the 1973 proposal was deficient because it did not address the time-to-tumor aspects of chemical carcinogenesis. Some comments pointed out that Albert and Altshuler have developed preliminary statistical relationships between low levels of carcinogen exposure and time of tumor manifestation (Ref. 65). These authors maintain that characterization of carcinogenic potential and potency on the basis of incidence alone is not appropriate because it ignores the life-shortening aspects of carcinogenesis. A comment of the same type was received in 1977.

The Commissioner generally agrees with these comments. He recognizes that he must consider all manifestations of chemically induced carcinogenesis, including decreases in latency times (life-shortening effects). Accordingly, the Commissioner has reviewed recent scientific publications that attempt to address comprehensively all manifestations of chemical carcinogenesis (Refs. 54, 59, and 65). These publications offer generalized statistical techniques purportedly suitable for estimating all types of risks from experimental animal data. As expected, they are complex in concept and demanding in skills required for use. Without prejudice toward the technical and scientific merits of these generalized techniques, the Commissioner proposes that the linear technique be adopted in these regulations. In the Commissioner's view, this simple-to-use technique can be adopted to deal with all manifestations of chemical carcinogenesis even though it was not originally elaborated with life-shortening effects in mind.

Simplicity of use, however, is only one aspect of the procedure that must be considered. Other important aspects are technical and scientific merits or deficiencies. Therefore, the Commissioner invites those interested and knowledgeable in statistical techniques for risk estimation to consider and comment on the scientific and technical merits or deficiencies not only of the procedure proposed but those of the curvilinear procedures as well. The Commissioner will review comments on the time-to-tumor issue and will make any appropriate modifications in the procedure finally adopted.

One comment in 1973 stated that "effects produced at higher dose levels

*** are useful for delineating the mechanism of action, but for any material and adverse effect, some dose level exists for man or animal below which adverse effects will not appear." The comment analyzed in detail the deficiencies of all statistical extrapolations and stated that approaches are available to define a true carcinogenic no-effect level. It contended that it is more appropriate to determine a biologically insignificant level using a safety factor based on competent scientific judgment. In 1977, several comments reiterated the threshold issue but provided no supporting information or justification. Further, one comment has claimed that threshold levels have been established for 23 chemical carcinogens, although it provided no data or information to support this assertion.

The Commissioner disagrees with the contention that the classical toxicology concepts of the terms "thresholds" and "biologically insignificant levels" are generally applicable to carcinogenesis. There is substantial scientific controversy over whether these concepts apply to irreversible processes, such as the chemical induction of malignant neoplasia. The concepts of "threshold" and "biologically insignificant level" derive from short-term toxicity experiments. They have no established meaning with respect to biological processes that require long latent periods (up to 20 or 30 years) before the manifestation of lesions.

If it could be shown that there exists a threshold level for carcinogenic effects below which no member of the exposed human population would be at risk of developing cancer, and if a method were available to establish such a level for specific carcinogens, the Commissioner would seriously consider adopting such a level as the no-residue standard for this regulation. There is reason to believe, however, that the classic toxicological concepts of "thresholds" and "biologically insignificant levels" may not apply to carcinogenesis, and, further, that even if they do apply, there is no known method for establishing them in a manner that will provide the public health protection necessary.

It is true that "no effect" levels have been observed for some carcinogens in bioassays conducted in experimental animals. Such observed "no effect" levels should not, however, be mistaken for "thresholds" or for "biologically insignificant levels." There are several reasons for this conclusion.

In the first place, animal experiments are limited in their power to detect carcinogenic effects. Most such bioassays test approximately only 100 animals at each dose level. If no response is observed in 100 test animals, the upper 99 percent confidence limit

of the response is approximately 5 percent. Thus, there is a probability that a dose level producing "no observed effect" in this type of bioassay actually produces a response up to 5 percent; such a response (cancer incidence) can by no means be considered insignificant, even for the small test animal population, let alone for the entire human population of the United States. Of course, an observed "no effect" level in a carcinogenesis bioassay may indeed represent a "true no effect" level for the test animal population; there is, however, no way to ascertain which of these two possible interpretations of observed "no effect" levels is correct.

Even if it were assumed that a "no observed effect" level derived from a carcinogenesis bioassay represented a "biologically insignificant" level for the test animal population, it is unclear how knowledge of such a level would permit establishment of a threshold level for an exposed human population. Animal studies are performed under carefully controlled conditions that allow as little variation as possible in the environments of treated and control groups. The test animals have a uniform diet, are generally of the same age and state of health, and are otherwise living under uniform conditions. Further, the animals usually used in experimentation are genetically homogeneous.

By contrast, the human population exhibits a broad range of dietary habits, health status, age, occupational environment and genetic background; such factors are known to influence responses to toxic substances. For this reason, the human population is expected to exhibit a far broader range of susceptibilities to carcinogens than does the small and relatively homogeneous test animal population for which "no effect" data may be available. Some segments of the human population may be less susceptible to the effects of a carcinogen, and some more susceptible, than the test animal group (Ref. 74). There is no information available that permits a quantitative determination of the relative susceptibilities of test animal and human populations. Therefore, it is not possible to devise a "safety factor" that can be applied to the animal "no effect" level (even assuming such a level were biologically insignificant for the test animal) to arrive at a level that can be considered safe for the entire human population. Moreover, if the animal "no effect" level is biologically significant for the test animal population (and, as has been shown this is not likely), the use of such a level to assign a safe level of human exposure, even after application of their safety factor, could lead to dangerously high levels of risk for humans.

Although the available information regarding the relative susceptibilities of test animal and human populations does not permit a quantitative determination of relative susceptibility, there are comparisons of a limited number of carcinogens (Refs. 66, 67, and 75). These comparisons only indicate that the lifetime cancer incidence induced by exposures in man can be approximated by the lifetime incidence induced by similar exposures in laboratory animals and that man may be no more susceptible than the most sensitive test animals species for which test data are available.

In addition to the variety of difficulties associated with methods for assigning threshold levels, there is considerable uncertainty whether such thresholds actually exist. There is, for example, evidence that cancer can arise from a single transformed cell and that this transformation results from a single exposure and can occur long after the causative agent has been removed (Ref. 68).

The question of whether population thresholds exist for carcinogens is open for comment, and the Commissioner is willing to accept and take into consideration evidence that may develop on this issue. For the present, however, the Commissioner takes the position that there is no known method for establishing thresholds.

The Commissioner's view on this issue accords with that of an expert Ad Hoc Committee on the Evaluation of Low Levels of Environmental Chemical Carcinogens contained in their Report to the Surgeon General, United States Public Health Service, April 22, 1970. The Report, which was published in full in "Chemicals and the Future of Man," Hearings before the Subcommittee on Executive Reorganization and Government Research of the Committee on Government Operations, United States Senate, April 6 and 7, 1971, contains the following conclusion:

It is impossible to establish any absolutely safe level of exposure to a carcinogen for man. The concept of "toxicologically insignificant" levels (as advanced by the Food Protection Committee of the NAS/NRC in 1969), of dubious merit in any life science, has absolutely no validity in the field of carcinogenesis. Society must be willing to accept some finite risk as the price of using any carcinogenic material in whatever quantity. The best that science can do is to estimate the upper probable limit of that risk. For this reason, the concept of safe level for man, as applied to carcinogenic agents, should be replaced by that of a socially acceptable level of risk.

No information developed in the past 7 to 8 years warrants modification of this view.

Several comments opposing the proposal suggested that the agency should maintain flexibility and evalu-

ate the approvability of sponsored compounds based on assessments of benefit and risk—in effect offering another approach to establishing the operational zero for carcinogenic residues. The Commissioner concludes, however, that an approach that contemplates considering the benefits of use of a sponsored compound in defining the no-residue standard is incompatible with the anticancer provisions of the act.

It is the Commissioner's opinion, at least for new animal drugs, food additives, and color additives in animal feed, that it is improper to use risk/benefit considerations in making decisions about their safe use. The legislative history of the Food Additives Amendment of 1958 shows that the benefits of food additives are not to be considered in assessing whether they can be safely used. This position was strongly supported by the food industry. The industry feared that FDA would refuse to approve new, safe additives that provided only marginal benefits to the consumers or marginal improvements over additives already on the market (Ref. 69). Further, in that amendment Congress also added the flat proscription on the addition of animal carcinogens to the food supply. That action provides additional support for the position that (except for the very limited role assigned to the determination of functionality) risk is the only appropriate consideration in assessing safety under the food additive provisions of the act, which in large part governed the use of new animal drugs intended for use in food-producing animals from 1958 until the enactment of the Animal Drug Amendments in 1968.

As explained in Part I of this preamble, the legislative history of the Drug Amendments of 1962 shows that the DES proviso to the Delaney clause was added only to correct what Congress perceived to be an inequity in the regulatory system caused by FDA's application of the food additive provisions to the existing use of DES in cattle. But there is no basis for concluding that Congress by that action intended that an express risk/benefit consideration be added to the procedure for assessing the safety of substances intended for use in food-producing animals. Rather, Congress noted that the protection afforded the public would remain unchanged despite enactment of the proviso (see Part I.A.3 of this preamble).

The Animal Drug Amendments were enacted in 1968 to consolidate the various provisions of the act that were being used to regulate new animal drugs. The legislative history of that statute also contains no directive to FDA that the agency consider benefits in assessing the safety and approvability

ity of a new animal drug. In the absence of explicit Congressional direction on this point, FDA historically has considered it inappropriate to balance the risk of cancer that may be associated with the use of a sponsored compound (and assumed by one societal group) against the benefits that may be derived from the compound's use (and accruing to a different societal group). Recent case law in United States Courts of Appeals for the 5th and the District of Columbia Circuit has addressed different situations (see *American Petroleum Institute v. OSHA*, 581 F.2d 493 (5th Cir. 1978); *Petition for cert. pending No. 1036* (U.S. 1979); *Agna Slide 'N' Dive Corp. v. CPSC*, 569 F.2d 831 (5th Cir. 1978); *Environmental Defense Fund et al. v. Environmental Protection Agency*, No. 77-1091 (D.C. Cir. Nov. 3, 1978); and *Hercules Inc., et al. v. Environmental Protection Agency*, No. 77-1248 (D.C. Cir. Nov. 3, 1978).

4. *Expression of dose level.* Several comments received before the February notice addressed the adjustments the Commissioner had proposed to make in the "safe" level derived from the experimental animal data in order to establish an appropriate value for man. Some comments stated that adjustments for differences in food intake between experimental animals and man were inappropriate when dealing with carcinogens. The comments stated that such adjustments would assume erroneously that all toxic materials have the same mode of action on a body weight basis. They further suggested expressing the relationship in terms of concentration in the feed of the test animals and in the food of man when the diet in both cases is consumed ad libitum, not on an amount-per-body-weight basis. Other comments argued that the extrapolation of animal data to man should be based on body-surface-area ratios.

The notice specified that carcinogenicity tests must be conducted with the test compound's concentration in the diet of the experimental animals held constant throughout the study. The safe or "acceptable" level derived from extrapolation of test animal data would be expressed as a concentration in the total diet (weight of compound/weight of total diet) of the animals and would be directly used as the acceptable level for the total diet of man. The Commissioner concluded that the arguments for conversion based on surface area ratios or on intake per unit of body weight have little basis. The comments provided no evidence that those concepts are applicable to low-dose chronic exposures. The concept of surface-area ratios is based on experience with short-term high-dose studies. Furthermore, mea-

surements of surface area are crude. Finally, surface area and body weight will vary, as will food intake per day, throughout the chronic study, thus requiring constant adjustments of dose.

Until evidence is compiled demonstrating that there is a more appropriate means to extrapolate from experimental animal to man for chronic exposure and carcinogenic manifestation, the Commissioner will assume that the animal is the integrator throughout its lifetime of any observed response to a fixed concentration in the diet. The Commissioner has thus adopted the direct extrapolation approach (the safe level in parts per million, parts per billion, etc., of the diet of the experimental animals directly applied to the diet of man), which is appropriately conservative as well as the most practical of the approaches considered.

5. *Degree of data confidence.* The Commissioner disagrees with comments that characterized the proposal's requirement for 99 percent confidence intervals as another in a series of unnecessarily conservative assumptions. Confidence intervals characterize the quality of experimental measurement. The Commissioner maintains that a high degree of confidence should be demanded for decisions respecting carcinogens. The Commissioner therefore has adopted the 99 percent level of confidence, and the final regulations, repropounded herein, require that all calculations based on experimental observations be made from or with the 99 percent confidence limits.

6. *Slope used for extrapolation.* Because the Commissioner is proposing to adopt the linear model for risk estimation, comments on the slope used for the extrapolation are now irrelevant.

7. *Spontaneous tumor rates and data combination.* In the 1973 proposal the Commissioner recognized certain limiting features common to all extrapolation procedures, including that of Mantel and Bryan. These limitations concern the tumor incidence rate in the control groups of animal bioassays and the selection or combination of data from different experiments.

In response to comments, the Commissioner adopted in the February 1977 notice the procedure developed and utilized by Mantel et al. (1975) for handling spontaneous tumors. This procedure is an extension of the principles first articulated in the appendix to the 1961 Mantel paper and treats the rate of spontaneous tumors as an additional statistical parameter to be estimated from the data. The linear procedure in this proposal also treats spontaneous tumors in control animals as an additional statistical parameter to be estimated when two or more

non-zero dose levels are utilized. When only one non-zero dose level is used for the linear extrapolation, an upper confidence limit on the increase in response of the dosed animals over the control animals is used. These methods of handling the data resolve some of the problems that arise when attempting to deal with spontaneous tumor rates.

Two comments in 1977 cautioned against the requirement for using the most "sensitive" test animals (i.e., the strain with the greatest tendency to develop tumors) as well as the "conservative" Mantel-Bryan procedure. They contended that these two requirements are incompatible because the high spontaneous tumor rate in the control animals reduces the number of animals that can manifest the effects of the chemical being tested.

The issue of sensitivity or susceptibility of the test animal species is relevant regardless of the statistical model selected for conducting the extrapolation. The commissioner does not intend to apply the term "sensitivity" or "susceptibility" in a way that is detrimental to the ability of the bioassay to detect carcinogenic potential, which has to be the overriding concern in selecting the test animal species.

In many instances, the male and female animals of the same strain may exhibit significantly different responses to a compound. Also, the responses of different strains and species may differ significantly. It is always desirable to make maximum use of available information by appropriately combining different data sets, but prudence must govern the process of selecting and combining data. Combining different data sets from the same or different experiments increases the number of animals used in the analysis and therefore increases the confidence in the results. Yet, in many instances, different data sets contain different types of information. Mantel et al. discuss the informational aspects of data combination for pooling data from different experiments and from different data sets in the same experiment. Although the Commissioner agreed in principle with most of their conclusions, it was nevertheless anticipated that situations would arise where the evidence in support of combining or not combining data would be equivocal. Therefore, the Commissioner concluded that the statistical and biological evaluation of data will determine which data sets, if any, will be appropriate for pooling. Where there are significant statistical and/or biological differences in the observed responses, only subsets of data representing statistically and biologically compatible bioassays will be combined for analysis.

Further comments on this segment of the February notice alleged that the agency's criteria for combining data are vague, arbitrary, and always unnecessarily conservative. A comment stated that FDA always combines the data to produce the highest risk regardless of the rationale for that combination. Other comments contended that cancer is a disease of old age. For this reason, it was argued, animal tests should be conducted in a way that reduces interference in the relevant observations caused by the high spontaneous tumor rates expected in animals of advanced age. It was also argued that, for the purpose of selecting data for a risk analysis, the agency should disregard all benign tumors occurring late in the test animals' lives.

There are many examples in which carcinogenic response to a chemical insult is limited to a segment of exposed human or animal populations, e.g., a single sex. It is only reasonable, therefore, that bioassay data be evaluated for the presence of such specific responses, and that the results of these analyses determine the ultimate manner of pooling data. These ultimate analyses are neither arbitrary nor vague and are based on well-established scientific principles. Further, they do not always lead to the "most conservative" interpretation of the data; these analyses attempt to identify the data base that will result in the closest approximation of the true risk. In the Commissioner's opinion, this process is not regulatory "overkill" by any means; rather, an examination of the process shows that each decision in the process is independent and must be made on the merits of the data available. The proposed methods for combining data are, in each case, reasonable and well accepted, and the end result of the process is also reasonable because of the independent nature of the individual steps. For example, the regulation stipulates that the appearance of either benign or malignant tumors or both is evidence of carcinogenicity. As numerous experts have noted, both types of tumors will ordinarily be taken into account for the purpose of estimating risk as long as they are dose-related. Both types of tumors represent a carcinogenic threat, and neither can properly be ignored (Ref. 12).

The occurrence of tumors late in the life of test animals is also evidence of carcinogenicity as long as tumors are dose-related and occur at a greater rate in the treated than in the control animals. The Commissioner has no basis to ignore, as one 1977 comment suggested, the occurrence of benign tumors that occur late in life.

The Commissioner believes that the correlation between the type and rate

of occurrence of tumors in the test animals and in man is poorly known and that to ignore benign tumors merely because they occur late in the lives of test animals would be imprudent.

8. *Level of risk.* The 1973 proposal suggested that an acceptable level of risk for test animals, and thus for man, could be 1 in 100 million over a lifetime. Many comments argued that this level of risk was unnecessarily conservative in light of the many other cumulative, conservative restrictions already in the proposed regulations. In the February notice the Commissioner concluded that the 1 in 100 million level of risk was unduly limiting without substantial compensation in terms of public health. Consequently, the notice established the maximum risk to be used in the Mantel-Bryan calculation as 1 in 1 million. The Commissioner explained the basis for selecting that level. Although additional comments on the level of risks were expressly requested, the Commissioner received only two comments on this issue. They contended that the level of risk selected was inconsistent with the congressional intent in enacting the proviso to the Delaney clause and was insufficiently protective of the public health.

Because Congress specified that the use of carcinogenic animal drugs and feed additives should leave "no residue" to be found (by methods prescribed by the Secretary) in edible tissue, it appears that Congress intended that the use of such animal drugs and feed additives not significantly increase the human risk of cancer from that use. It is also evident, however, that Congress intended to permit the use of carcinogenic animal drugs and feed additives if there would be no significant increase in the human risk of cancer from that use. Historically, safety decisions involving the use of chemicals have been made with the aid of numerical safety factors that do not consider the actual level of risk to the public. Observed no-effect levels from animal data are divided by an absolute safety factor to give a "safe" level for humans. For carcinogens, the Commissioner has concluded that it is necessary for the agency squarely to face the level of risk associated with a chemical compound's use before the agency will permit the use, and it is for that reason the Commissioner is proposing the statistical procedure for assessing risks prescribed in this document.

In the Commissioner's opinion, the acceptable risk level should (1) not significantly increase the human cancer risk and (2), subject to that constraint, be as high as possible in order to permit the use of carcinogenic animal drugs and food additives as decreed by

Congress. For the following reasons the Commissioner believes that a risk level of 1 in 1 million over a lifetime meets these criteria better than does any other that would differ significantly from it:

(a) The risk level of 1 in 1 million is an increased risk over the entire lifetime of a human being.

(b) The upper 99-percent limit on the response data is used throughout the procedure, and the extrapolation procedure is conservative by nature. For these reasons, the maximum concentration of residues of carcinogenic concern that will go undetected in edible tissues is expected to increase the lifetime risk of excess cancer in humans by less than 1 in 1 million.

(c) This 1 in 1 million lifetime risk is expected only if the maximum concentration of residues potentially undetected in edible tissues is consumed every day over a lifetime. Because there is little likelihood that these residues will be so consumed by humans, the actual risk is likely to be lower than 1 in 1 million.

(d) The use of the procedures explained in the proposed regulations for deriving a concentration of residues that may go undetected in edible tissues rests on the assumption that the only risk to the exposed human population is that from residues of the sponsored compound. Other causes of disease or death are not considered. Because the population is constantly at risk from a wide range of factors, any increment of risk associated with residues subject to this proposed regulation is in comparison with other risks, likely to be vanishingly small.

(e) Several other prudent procedures apply to the derivation of the concentration of residues that will be permitted to go undetected (see section V.D. of this preamble below). For these and the above reasons the most likely human risk is expected to be less than 1 in 1 million.

(f) Once the level of risk is as low as 1 in 1 million, any further reduction in the level would not significantly increase human protection from cancer.

(g) An increase in the level of risk to 1 in 10,000 might significantly increase human risk. It is difficult to choose between 1 in 1 million and 1 in 10,000 but the agency chose the more conservative number in the general interest of protecting human health.

Furthermore, considerable discussion of the issue of acceptable level of risk has taken place recently (Refs. 55, 70, 71, 72, and 73), suggestions for the acceptable level of risk range from 1 in 20,000 per lifetime to 1 in 100 million. In addition to protecting the public health and satisfying the congressional directive, the Commissioner believes the selected level of risk should be consistent with acceptable levels of

risk for other materials that are considered safe, and should prevent any false sense of security in the calculations. After reviewing data on acceptable levels of risk and knowing the limitations on the procedures, the Commissioner has concluded that a level of risk of 1 in 1 million over a lifetime satisfies all of these criteria.

The Commissioner notes that for a few carcinogens, some limited comparisons have been made between risks estimated from animal experiments and those calculated from human epidemiology studies (Ref. 66, 67, and 75). The tentative conclusion from these comparisons is that the lifetime cancer incidence induced by chronic exposures in man can be approximated by the lifetime incidence induced by similar exposures in laboratory animals. For this reason, the various conservative procedures and assumptions attached to the establishment of the permissible concentrations of potentially undetected carcinogenic residues should compensate for the possibility that for some carcinogens humans in general or some numerically significant groups of humans are more sensitive than test animals. Likewise, compensation must be made for the possibility of additive and multiplicative effects among the many carcinogens to which people are exposed daily. It is impossible to supply a quantitative estimate of the degree of compensation that results from the application of the various prudent procedures and assumptions. For these reasons the Commissioner has exercised caution by proposing an acceptable level of risk as low as 1 in 1 million.

In summary, the Commissioner has concluded that a risk level of 1 in 1 million over a lifetime imposes no additional risk of cancer to the public. A lower risk would not significantly increase the public health protection, but would probably proscribe the use of most animal drugs or feed additives. A risk level significantly higher than 1 in 1 million, for example 1 in 10,000, might present a significant additional risk of cancer to the public.

D. DERIVATION OF THE LEVEL OF TOTAL RESIDUES OF CARCINOGENIC CONCERN THAT CAN BE TAKEN AS SATISFYING THE NO-RESIDUE REQUIREMENT OF THE ACT.

As explained previously, a potential residue level corresponding to a lifetime risk of 1 in 1 million in test animals (i.e., the safe level derived from a statistical extrapolation procedure) can be considered the level that represents no significant carcinogenic burden in the total diet of man. This level was assigned the symbol " S_0 " in the February 1977 notice, and expressed as a fraction in the total diet of the test animals, i.e., parts per billion,

parts per trillion. The Commissioner concluded that it is the potential undetected residue level that is safe in the total diet of man.

In some cases, residues in addition to the sponsored compound itself will have been selected for carcinogenicity testing. In these instances, safe or acceptable levels will be derived for each of the compounds that has undergone testing. The compound exhibiting the lowest value for the safe level is the most potent carcinogen of those tested and poses the greatest potential carcinogenic threat among the residues. The Commissioner assumes that the smallest value of the safe levels of all the carcinogenic compounds tested represents the acceptable, total potential carcinogenic burden to man that may result from the administration of a sponsored compound to food-producing animals. This smallest value is assigned the symbol S_0 . Because tested residues other than the one selected for S_0 may have exhibited carcinogenic properties (although less potent) and still other, untested residues may represent carcinogenic risks, the sum of the levels of all of the residues must be less than S_0 to ensure that any undetected residues do not present a significant risk of cancer to humans. Potential residues in the total human diet cannot exceed S_0 if that diet is to bear no significant carcinogenic risk to man as a result of the residues. The only residues that can be excluded from the sum or residue levels are those that have been unambiguously shown to be noncarcinogenic in accordance with the principles described earlier.

One comment stated that the Commissioner failed to provide a mechanism to ensure that the total residue (S_0) will be accurately measured in edible tissues.

The comment has misunderstood the construct of the regulations. The S_0 value is a projected acceptable total level of residue that is determined by calculations using bioassay (toxicology) data; it is not determined by totally individual analytical measurements. Therefore, the appropriate tasks with regard to safety are (1) determining the time when the total residues in edible tissue of target animals have depleted to S_0 and below, and (2) selecting a suitable marker compound to monitor total residues. The determination of the expected time of the depletion of the total residues to S_0 will be made in the second metabolism study, which is described in section VI below in this preamble. The second metabolism study will normally be conducted with radiotracer techniques that permit identification of a marker residue and target tissue. The regulatory assay will be used to monitor whether the total residue has depleted

to S_0 . The accuracy and precision of these techniques is well recognized and accepted.

E. CORRECTIONS FOR FOOD INTAKE

Several comments on the original proposal argued for, and others opposed, further adjustments based on patterns of food consumption. Some comments contended that the "safe" level of Mantel and Bryan in the animal diet should be directly applied as the upper allowable limit in man's diet and in any component food in the human diet. These comments argued that this limit should not be raised by considering the intermittency of consumption of particular foods or the proportion of the total diet represented by an individual food. They suggested that individuals who consume above average amounts of food would be exposed to above average, and thus possible harmful, levels of residues. Further, these comments contended that the act does not distinguish between the people who consume average diets and people who consume above average quantities of certain foods; the two groups are entitled to equal protection. They argued that adjustments for exposure frequency based on food consumption patterns assume that continuous long-term exposure to a carcinogen precedes the development of cancer.

Many other comments urged that adjustments be made based on the proportion of the specific food in the total diet and the frequency of exposure. These comments generally favored the use of food consumption data, so that the degree of conservatism would be more uniformly applied and would take into account the relationship of the particular food to the total diet.

The Commissioner disagreed with the contention that no adjustments should be made for factors of exposure. Section 512(d)(2)(A) of the act requires the Commissioner to consider the probable consumption of a drug and of any substance formed in or on food because of its use. All drugs, including carcinogens, are subject to the general safety provisions of the act. Consideration of the formation of chemical residues on food is necessary whether the drug is a carcinogen or a chemical toxicant of another type. There is no legal, scientific, or policy basis for concluding otherwise. The no-residue standard of the act has been defined as satisfied when the sum of the levels of all potential undetected residues of the sponsored compound (excluding only those that have been found to be noncarcinogenic) would not exceed S_0 in the total diet of man. Because products derived from food-producing animals do not constitute the total human diet, it is appro-

priate that S_0 be corrected for probable human consumption of specific tissues. The Commissioner agreed, however, that any adjustments must be conservative to assure that all segments of the population are protected.

Muscle tissue and eggs can be considered, conservatively, to each constitute one-third of the total daily human diet. Because milk can constitute the total daily diet of some individuals (e.g., infants), the Commissioner concluded that no adjustment for this commodity is appropriate. Adjustments for frequency of exposure for tissues other than muscle, milk, or eggs, (i.e., kidney, liver, etc.) will be considered when data are available that permit the Commissioner to conclude that the average daily intake of residues will not exceed S_0 .

The February 1977 notice used the symbol " S_m " to represent the level of total residues of carcinogenic concern that can be operationally defined as satisfying the no-residue requirement of the act for specific tissues. The S_m value represents the level of residues that is acceptable for specific classes of edible products that constitute finite percentages of the total diet. Because milk may constitute the entire diet of an infant, the S_m value is its S_0 value. But because muscle tissue constitutes one-third of the diet, the S_m value is 3 times the S_0 value of the compound.

One comment on this section of the regulations said that the Commissioner was opening an avenue to permit as much as 20 times the S_0 value in muscle tissue. This is emphatically not the case. The comment failed to recognize that the regulation establishes specific dietary conversion factors for muscle tissue, eggs, and milk ($\frac{1}{3}$, $\frac{1}{3}$, 1, respectively), and conversions will be permitted for other tissues only when there are data to ensure that the S_0 will not be exceeded in the total diet.

One comment raised a question about the quality of data used to establish the dietary factors for the major tissues, but the Commissioner concludes that the factors are correct. Although there are indications that the American diet has changed considerably in some areas in the past few years (e.g., the consumption of fabricated foods), there is no evidence that the consumption of muscle tissue, milk, and eggs, which serve as the basis for the basic dietary factors, has changed.

F. OTHER POSSIBLE ADJUSTMENTS

Several 1973 comments urged that the regulation not provide for adjustments for the degradation of residues in food under normal conditions of storage and cooking. Other suggested that this data should not be required, but should be taken into account when

available. Still other comments expressed the fear that this data would be used to dilute the conservative intent of the regulation; they argued that the term "normal condition of storage and cooking" would be difficult to define, and it might reduce protection in situations where actual storage and food preparation practices did not approximate experimental conditions. Finally, some comments suggested that these studies be required only when there is reason to believe that the information would assist in protecting public health.

One comment on the February 1977 notice averred that the agency proposed to permit food with illegal residues to be marketed on the theory that violative levels of residues would "dissolve" before the food could be consumed.

The Commissioner agreed that the criteria appropriate to these studies were not defined, and he deleted the references to postslaughter residue degradation studies from the February 1977 notice. When there is reason to believe that storage conditions or food preparation methods might lead to the formation of potentially toxic residue products, however, the Commissioner will require appropriate special investigations. Petitioners are encouraged to explore the postslaughter stability of residues. Experience has shown that residue stability can be a complicating factor in studies for validating assays for dosed tissues. The Commissioner encourages research in this area; but until appropriate information can be reliably incorporated into food safety decisions, these data will not be used to liberalize the regulatory requirements.

G. OTHER POSSIBLE SAFETY FACTORS

Originally, the Commissioner proposed that the calculated does be modified to account conservatively for drug use patterns, e.g., the administration of the drug in the treatment of diseased animals. Comments stated that disease incidence does not occur randomly within a geographic area or within specific animal groups. Although a disease may have an overall incidence of only 10 percent, the affected group may be located in a single area. Therefore, the Commissioner was unable to conclude that evidence exists, or other safety factors are available, to permit the agency to calculate the effect of such drug usage, and this provision was deleted. No later comments have been received on this point.

VI. METABOLIC STUDY TO SELECT MARKER RESIDUE AND TARGET TISSUE

A. THE CONCEPT

Before the use of a sponsored compound can be approved, the Commissioner must determine that a practical and reliable assay is available to measure carcinogenic residues at the level which discriminates safe from unsafe food, i.e., the assay must be capable of determining when S_m is exceeded in each edible tissue. One approach to this problem would be to require assays that can be used to measure every residue in each of the various edible tissues. Because the number of residues in edible tissues and the number of tissues can sometimes be large, it is unlikely that such an approach would be practical. There is another far more practicable approach, which sacrifices no principle of safety. This alternative approach centers on the concepts of a marker residue and a target tissue.

A marker residue is a residue whose level in a particular tissue is in a known relationship to the level of the total residue of carcinogenic concern in all edible tissues and which, therefore, can be taken as a measure of the total residue of interest in the target animal. Once a marker residue is selected and its quantitative relationship to the total residue is determined, it is possible to calculate a level, for purposes of these regulations, R_m , which is that level of the marker residue that must not be exceeded in a selected tissue (the target tissue) if the total residue of carcinogenic concern in the edible tissues of the target animal is not to exceed S_m . The marker residue can be the sponsored compound or any of its metabolites, or a combination of residues for which a common assay can be developed.

The target tissue is that tissue in which the absence of the marker residue at R_m or above can be taken as confirmation that the safe residue level, S_m , is not exceeded in any of the edible tissues. When a marker residue and a target tissue are selected, a practicable assay must be developed that can reliably measure the marker residue in the target tissue at levels at least as low as R_m , and conditions of use of the sponsored compound must be established that assure that, in practice, the potential marker residue level in the target tissue does not exceed R_m .

When it is determined, using an assay demonstrated to be capable of reliably measuring the marker residue in the target tissue at levels at least as low as R_m , that there is no such residue at levels at or above R_m , it can be concluded that the no-residue standard of the act has been satisfied for all edible tissues in the animal under ex-

amination. Conversely, if the marker residue is found in target tissue at levels equal to or greater than R_m , all edible tissues must be considered unsafe for human consumption.

B. APPLICATION: DATA COLLECTION AND CALCULATION OF R_m

1. *Marker residue.* Application of the concepts of marker residue and target tissue requires an experimental determination of the quantitative relationships of residues that might serve as marker residues (including any that have definitely been shown to be noncarcinogenic, because theoretically one of these might be selected as marker residue) to the total residue in each of the various edible tissues that might serve as target tissues. Further, because these relationships change with time, the levels of potential marker residues in the potential target tissues must be measured over time, and tissue concentration-time profiles must be constructed. These depletion profiles will be derived from measurements made in target animal tissues after cessation of exposure to the sponsored compound. Finally, because the results of carcinogenicity testing have been used to set limits for total potential undetected residues in each of the individual edible tissues, the depletion profiles must include measurements of the total residue in each potential target tissue to levels at least as low as the S_m appropriate to the tissue. Also, depletion profiles for one or more potential marker residues must be constructed and include measurements of levels of residues corresponding to the times when the total residue has reached S_m (Plates I and II set forth in proposed § 500.89).

Part III of this preamble describes the requirements for the study of the metabolic fate of a sponsored compound in target animals. Although the purpose of this earlier metabolic study is to provide information for selecting residues for carcinogenicity testing, the same principles and requirements are applicable here and must be followed in acquiring the information necessary to construct depletion profiles. However, to meet the depletion profile requirements prescribed by the regulations, a second metabolic study of the sponsored compound in the target animals may be necessary. This second and possibly more refined study may require using a larger number of animals. It will be necessary to determine the total number and the quantities of residues at several appropriate times, starting immediately after cessation of exposure and continuing until the residues in each of the potential target tissues have reached a level corresponding to a total residue level of the appropriate S_m for that tissue. If the initial meta-

bolic study is done in a manner adequate to select a marker residue and a target tissue, of course, it need not be repeated.

Selection of a marker residue will be based on examination of depletion profiles. Generally, there will be a time at which the sum of the levels of the individual residues of carcinogenic concern will fall below the S_m appropriate to the tissue under examination. Residues that are potential markers will be present at a known concentration (R_m) at this same time (Plate I), and in a definite (although perhaps rapidly changing) quantitative relationship to the total residue (Plate II).

With the quantitative relationships established, it will be possible to select one of the residues as a marker. Ordinarily, the residue selected will have the following characteristics: (i) It will represent at least 10 percent, and usually more, of the total residue burden at the time the total residue was depleted to S_m ; (ii) it will be stable, easily isolated and characterized, and susceptible to manipulation for assay development and implementation; and (iii) it will be undergoing relatively rapid change in concentration at the time the total residue burden is at or near S_m (i.e., a change in its concentration will be a sensitive indicator of the time when the total residue burden has depleted below S_m). Although other considerations may enter into the selection of a marker residue, these three will ordinarily be most important.

There may be instances in which no single residue can adequately fulfill the requirements a marker residue must meet. In such instances, it may be necessary to select some combination of residues which, taken together, can represent the total residue burden. It should be noted that a marker residue can be a compound which is not a carcinogen, but is an unambiguous indicator, in the manner already described, of the presence or absence of carcinogenic residues.

2. *Target tissue.* Selecting a target tissue requires a comparison of the depletion profiles for each of the edible tissues (Plate I set forth in proposed § 500.89). A target tissue will be selected on the basis of assurance that the absence of the marker residue at or above R_m means that carcinogenic residues are absent from the tissue that requires the longest time to achieve its S_m , and thus that the entire animal is free of carcinogenic residues.

When a compound is to be used in milk- or egg-producing animals, milk and eggs will be target tissues in addition to one tissue selected as the target tissue to represent the depletion of residues in all of the edible carcass. In these cases, it may be necessary to select a marker residue for milk or eggs that is different from the

marker residue selected for the target tissue representing the edible carcass.

3. *Calculation of R_m .* The R_m for a marker residue is the level of that marker residue which is present in the target tissue at the time, T_L , when the sum of the levels of the residues in the tissue that requires the longest time to achieve its S_m (excluding any residues that have definitely been shown to be noncarcinogenic) is equal to S_m for that tissue. The depletion profiles will be used to select R_m (Plate II set forth in proposed § 500.89).

For example, assume (i) that liver is the target tissue of animal drug, P, intended for use in cattle; (ii) that the only residues of P are the parent compound, P, and a metabolite, P_{IGT} ; (iii) that T_L is 3; (iv) that S_m for the sponsored compound is 29 parts per billion; and (v) that the following is a chart of the depletion profile of the drug.

Time	Total residue burden	P	P_{IGT}
0	100.00	75.0	25.0
1	65.4	41.6	21.8
2	42.0	25.3	17.3
3	29.0	15.0	14.0
4	21.0	9.0	12.0
5	15.0	5.0	10.0

In this case, before the drug can be approved for use, the petitioner must develop an assay that will satisfy the evaluation criteria in liver for either P at least as low as 15 parts per billion or P_{IGT} at least as low as 14 parts per billion. Because P is depleting faster than P_{IGT} , when the total residue burden is 29 parts per billion, P may be the preferred compound to select as the marker residue because it provides a more sensitive assessment of when the total residue burden reaches 29 parts per billion (S_m). Another example is provided in Plate II in proposed § 500.89.

Comments on the marker residue-target tissue segment of the regulations posed questions about the definition of terms and the implementation of procedures. One comment requested that the Commissioner add a table of definitions for the entire subpart, and it suggested that the agency coin a new term for the "marker residues." Another comment questioned whether the studies required to identify the marker residue and target tissue are truly "metabolism" studies. The February 1977 notice stated that the Commissioner would select the target tissue and marker residue, and one comment suggested that they be selected by the petitioner, who has a better knowledge of both the sponsored compound and of the availability of technology to develop assays for metabolites. Another comment questioned whether the agency is requesting sufficient information on edible

tissues to permit a determination of a marker residue or target tissue. It also questioned why the most slowly depleting tissue is not always the target tissue. It further requested that the target tissue concept be clarified when a target animal is used for milk or egg production.

The terms "marker residue" and "target tissue" are defined in proposed § 500.83, and their meanings will be codified by the final regulations. For clarity, a new section is added to define all new terms for the subpart. The term "metabolic study" has been used by FDA to describe the types of studies called for by the regulations for many years. The Commissioner disagrees that the term is inappropriate.

The Commissioner agrees that the petitioner for a sponsored compound has a role in selecting the marker residue and target tissue. Under current agency procedures, the selections are made with the opportunity for participation by the petitioner, and thus the petitioner's knowledge and proponent status are recognized. Because the agency must make the decision on whether the sponsored compound can be safely used, however, it must remain the ultimate decisionmaker.

The regulations require petitioners to determine the tissue depletion profiles for residues, and for a sponsored compound a considerable part of this information will already have been gathered by the initial metabolism study. (See section III of the preamble.) The Commissioner concludes that it is appropriate to select the target tissue from among tissues likely to become storage depots or to be involved in metabolism and excretion of the sponsored compound. Routinely examining other more specialized tissues in great detail will yield little additional useful information. Material balance calculations will be used as necessary to determine whether other tissues are potential storage depots and therefore may be target tissues.

The criteria for selecting the marker residue and target tissue are such that, when the marker residue concentration passes through its R_m in the target tissue, all other residues in the tissues, including the most slowly depleting tissues, will have passed through their R_m . Therefore, the most slowly depleting tissue need not be the target tissue.

Finally, the Commissioner explained in the February notice that for milk- and egg-producing animals, it is necessary to have a target tissue in addition to the milk or eggs. To clarify this matter, the Commissioner added this requirement to the regulations.

VII. SPONSORED COMPOUNDS AFFECTING POOLS OF CARCINOGENIC OR POTENTIALLY CARCINOGENIC SUBSTANCES ENDOGENOUS TO TARGET ANIMALS

A. APPLICABILITY OF NO-RESIDUE REQUIREMENT

The act requires that in making food safety decisions, the Commissioner take into account all substances formed in or on food by the administration of sponsored compounds to food-producing animals. It is well recognized that: (i) Several substances endogenous to food-producing animals are suspect or proven carcinogens (Ref. 64); (ii) in any given animal species or breed, the size of pools of such endogenous substances may vary widely and are affected by such factors as sex, age, lactation, state of estrus, pregnancy, and geographic location; and (iii) humans have had sustained exposure to such endogenous substances for centuries. Whether normal levels of human exposure to these substances are responsible for human carcinogenesis is unknown, but using drugs that can cause an increase in human exposure to these compounds has the potential of increasing the risk of human carcinogenesis. Under the act, therefore, the use of such drugs must be controlled.

In dealing with potentially carcinogenic endogenous compounds, the 1973 proposal declared that the intent of the no-residue requirement of the act is the maintenance of the normal human dietary content. Thus, the February 1977 notice required the determination of the effects of sponsored compounds on the normal background levels of potentially carcinogenic endogenous compounds. If a compound is found to increase these levels, conditions of use are to be established so that normal background levels are not exceeded in the animal when the animal is slaughtered. The notice also required development of practical assays for measuring levels of endogenous compounds.

Several comments on this segment of the 1973 proposal expressed concern over the meaning of the term "endogenous compounds" and questioned how these compounds are to be distinguished from "exogenous compounds." Others questioned whether the former term includes chemical derivatives (estradiol benzoate) of bona fide endogenous compounds (estradiol) or essential nutrients (some amino acids, minerals, vitamins). Comments also expressed doubt about the distinction between endogenous and exogenous compounds when the administered compound can be metabolized to residues of both classes. Some comments also argued that all externally administered compounds should be

considered exogenous, as the true meaning of the term implies.

Other comments suggested that endogenous substances of interest be subjected to toxicological testing and tolerances be set if such substances are found to be not carcinogenic. Some doubted that available technology could meet the proposed requirements. They contended that the terms "normal conditions of use" and "normal background levels of endogenous compounds" would be either extremely difficult or impossible to define. While recognizing the difficulty of the task, the Commissioner concluded that administered compounds that increase the naturally occurring level of potentially carcinogenic endogenous compounds present special problems of control, which the proposed regulations had to address and resolve.

As the Commissioner explained in the February 1977 notice, an endogenous compound is any compound that is metabolically produced by and is present in untreated target animals. Any sponsored compound which, when administered to a target animal, is found to increase the normal background levels of a potentially carcinogenic endogenous compound is subject to these proposed regulations, regardless of how the increase is brought about. For instance, estradiol benzoate, which by the above definition clearly is not an endogenous compound, is metabolically converted to the endogenous compound estradiol and may thus cause an increase in normal background levels of that substance. Estradiol may itself be administered and possibly cause target animal pools of estradiol to increase above background. Finally, a sponsored compound may indirectly cause an increase in tissue levels of estradiol by affecting any number of hormonal regulatory systems in the target animals.

Although in each of the above-cited cases the cause of the increases in normal background levels of estradiol is different, the result is the same. And it is the result that must be monitored and controlled. It is thus of little use to distinguish between "endogenous" and "exogenous" administered compounds. Rather, it is useful only to distinguish between administered compounds that can cause changes in normal background levels of potentially carcinogenic endogenous compounds and those administered compounds that do not affect such levels.

Essential nutrients are not included in the definition of the classes of compounds that will be regulated by these proposed regulations. In a strict sense, essential nutrients are not endogenous. Although present in the tissues of animals and required for growth

and health, they are not produced by the animals and must be supplied from external sources. These features place essential nutrients in a distinct class of "required exogenous compounds," which must continue to be regulated in a unique manner. Determination of the allowable use of essential nutrients must reflect the target animals' nutritional requirements. When used according to label directions, supplements of essential nutrients that present carcinogenic risks should restore, but must not exceed, the essential nutrient levels found in natural foods adequately sustaining normal growth of healthy animals. Furthermore, the levels of such essential animal nutrients found in human food derived from animals with diets supplemented with essential nutrients must not exceed the levels in food derived from normal healthy animals fed a nutritionally adequate natural diet.

B. GENERAL PROCEDURES

If available information shows that a sponsored compound might affect pools of potentially carcinogenic endogenous substances above the level considered to be safe under the criteria of these proposed regulations, the petitioner would be required to investigate whether such effects occur under the conditions of the compound's proposed use.

The Commissioner proposes the following requirements: (i) Establishment of normal background levels (or "norm") of the endogenous compound of carcinogenic concern in the target animals; (ii) determination of the effects of the sponsored compound on the norm; (iii) establishment of safe conditions of use of the sponsored compound by demonstrating how the compound can be used in a way that ensures that the norm is restored in the target animals before slaughter; and (iv) development and validation of a practical assay to measure the endogenous compound at levels specified by the norm. The proposed regulations specify how each of these steps is to be accomplished.

C. SPECIFIC STEPS REQUIRED

The petitioner would first be required to determine experimentally the normal background levels, or norms, of the potentially carcinogenic endogenous compounds of concern in untreated target animals. A norm must be specific for the untreated target animals. The petitioner would provide the norm in the form of a cumulative frequency distribution of the observed levels of the endogenous compound. This curve must also include 99 percent confidence limits (Plate III appearing in proposed § 500.89).

The median and shape of the frequency distribution must be known so that shifts in the norm can be measured. For this reason, the assay used to determine a norm must yield values for the endogenous compound different from zero for at least two-thirds of the untreated target animals. This latter requirement is a compromise between the need to determine the frequency distribution with a high degree of reliability and at the same time to recognize the difficulties that may be encountered in measuring levels at the lower end of the norm.

The petitioner would then determine the effects of the sponsored compound on the norm and provide data on the postexposure decay of any observed increases in the norm. The norm is considered restored when the distribution of values for the endogenous substance of concern observed in a group of treated animals is, with 99 percent confidence, the same as the norm.

The norm, as defined, takes into account those variables that affect background levels. The proposed regulations thus resolve the difficulties raised by 1973 comments suggesting that "normal background levels" would be difficult to define.

D. ENDOGENOUS MARKER RESIDUE: CALCULATION OF R_m

If the norm of an endogenous substance of carcinogenic concern can be increased by the administration of a sponsored compound, the endogenous substance can become an endogenous marker residue, i.e., its presence above certain levels can be considered an indicator of potentially carcinogenic residues in food. Approval of the use of such a sponsored compound is contingent upon the petitioner's furnishing of data demonstrating that the norms are restored in the target animals before slaughter, and upon the availability of a practical assay that can reliably measure the endogenous marker residue in target animals. This regulatory assay must be capable of measuring the marker residue at the level, R_m , corresponding to the 33d percentile of the norm (Plate III set forth in proposed § 500.89).

The R_m for an endogenous marker residue derives from a conceptual approach entirely different from that used for the derivation of an R_m for an exogenous marker residue. To monitor shifts in the norm, the Commissioner must be able to measure the median and to determine the shape of the distribution. An assay capable of measuring the 33d percentile of the norm provides the analytical capability necessary to determine whether the norm has been shifted by administering the sponsored compound to the target animals because it permits measuring

two-thirds of the points on the distribution curve. The same assay evaluation criteria apply to endogenous compounds as to other compounds covered by these proposed regulations.

Accordingly, the commissioner in the February 1977 notice revised the provisions which, as proposed, would have originally established the lowest limit of reliable measurement at the 99th percentile of the norm. As the comments noted, an assay that can measure only the upper 99th percentile would not be able to detect any shifts in the norm, which is its primary function. The proposed regulations require an assay capable of a lowest limit of reliable measurement of the 33d percentile of the norm, which will readily detect any shifts in the median or mean of the norm. Determination of compliance depends on a regulatory system that monitors shifts in the norms and not levels of endogenous substances in individual animals.

E. ALTERNATIVE PROCEDURE

Earlier comments contended that an alternative to the foregoing procedure should be available for regulating endogenous substances. It was suggested that a tolerance for an endogenous compound can be established at levels above the norm, provided that appropriate toxicity testing on the compound is carried out and a safe level can be established in accordance with sections IV through VI of this preamble and proposed §§ 500.84 through 500.90.

Separate mechanisms with distinctly different rationales have been developed to measure compliance with the no-residue standard of the act for endogenous and exogenous compounds. As noted earlier, for exogenous compounds, the regulations would require development of an assay with a lowest limit of reliable measurement at or below the level needed to ensure that any undetected residues pose essentially no increased risk of cancer in the population. On the other hand, the method for measuring compliance with the no-residue standard for an endogenous substance is based on the norm.

In the absence of toxicology data of the type needed to determine a safe level for exogenous compounds, described in section V of this preamble, the Commissioner maintains that restoring the norm is the only way to ensure the absence of unacceptable risks resulting from the use of compounds that may increase pools of potentially carcinogenic endogenous substances. If the toxicology data are available, however, and are suitable for extrapolation by the procedures described in section V of this preamble, the Commissioner will permit a shift in the norm equal to the incre-

ment shown to produce a lifetime cancer risk no greater than 1 in 1 million.

The 1977 notice announced that the Commissioner was receptive to suggestions for other alternative mechanisms of control. Two comments argued that the Commissioner has no authority to regulate increases in potentially carcinogenic endogenous substances that occur "indirectly" from the administration of the sponsored compound. They contended that the Commissioner can only regulate substances that derive directly from the sponsored compound, not from its use. The Commissioner rejects these comments, which are analogous to the earlier comments that the agency can regulate only a parent compound, not metabolites, under the Delaney clause. As explained in the February 1977 notice, the Commissioner is concerned about the use of compounds that may increase the pools of potentially dangerous endogenous substances that may be formed in or on food because of a sponsored compound's use. The general safety provisions of the act clearly cover all substances formed in or on food due to the use of a sponsored compound, and it is proper to consider excess levels of endogenous compounds of carcinogenic concern as such substances.

A comment requested that the Commissioner specify which potentially carcinogenic endogenous compounds are within the purview of this section. The Commissioner concludes that the proposed regulation covers all endogenous compounds that animal or human data show may present a carcinogenic risk.

Concerning the comment that all endogenous substances should be proscribed from use in animals, the Commissioner advises that there is no legal basis for their outright prohibition. Furthermore, the regulations prescribe procedures for use of these substances that ensure the same degree of safety as that required for the use of exogenous compounds.

Finally, a comment stated that the studies described in the February 1977 notice are costly, and it contended that, unless the data collected are considered proprietary, the requirement puts pioneers in the field at a disadvantage. The comment also requested that the Commissioner specify the studies required to define the norm and measure its restoration.

Under the current law, the Commissioner concludes that data on the norm are safety data required for every application and are proprietary data for new animal drugs. However, to reduce unnecessary testing, expenses to the regulated industry, and costs to the government, it is the agen-

cy's policy to encourage joint funding of tests.

The Commissioner believes it inappropriate to establish, as part of the regulations, detailed protocols for studies required to establish norms. However, the following example is offered as a guideline. To determine, with a high degree of confidence (99 percent), the characteristics of the distribution of the individual values that constitute the norm, the petitioner will ordinarily be required to examine a reasonable number of animals in each production class of target animals in which the sponsored compound is proposed for use, both treated and untreated. In each group, 450 to 500 animals will be sufficient to determine with 99 percent confidence:

(1) That the 99th percentile of the norm is less than the largest observed value; and

(2) That the cumulative frequency distributions of the observed levels of the endogenous compound in untreated target animals and in the treated target animals do not differ by more than .10 at any specific point.

To test whether the norm for the sample of untreated animals and the values for the sample of treated animals came from the same population, i.e., there was no effect due to treatment with the drug, the petitioner may use the Kolmogorov-Smirnov two-sample test. This test is concerned with the agreement between two cumulative frequency distributions. This test is sensitive to any type of difference in the distributions from which the two samples (treated and untreated) were taken, e.g., differences in location (mean, median, etc.), differences in variation, differences in skewness, etc.

The only assumptions required for this test are—

(1) That the samples are random samples;

(2) That the two samples are mutually independent; and

(3) That the samples are from a continuous population.

Specifically, the Kolmogorov-Smirnov test evaluates the probability of the maximum absolute difference that would occur between two cumulative distributions if they were obtained from the same population. For the details of conducting the test see Refs. 77 and 78. It must also be remembered that the above-described study may be conducted in lieu of chronic toxicity tests, and it can be conducted during the effectiveness studies. Thus the costs of developing and marketing an endogenous compound will be comparable to the corresponding costs for an exogenous compound.

VIII. REGULATORY ASSAY: EVALUATION CRITERIA AND APPROVAL PROCESS

A. INTRODUCTION

The Commissioner can approve a sponsored compound for use in food-producing animals only if the intended use of the compound does not result in the accumulation of potentially carcinogenic residues in edible tissues and if an assay is available that can reliably measure such residues at and above the R_m . The assay must also be suitable for monitoring food from animals administered the compound to prevent food from reaching the marketplace if it is adulterated with potentially carcinogenic residues resulting from misuse of the compound.

Many comments in response to the 1973 notice contended that more explicit criteria and evaluation procedures should be specified.

The Commissioner agrees with these comments. Because the assays required by these proposed regulations are to be used for regulatory monitoring of residues of potential carcinogenic concern in food, rigorous criteria must be established for approval of these assays. Furthermore, the proposed assay must be subjected to an objective evaluation to determine whether it meets the criteria. Only then can there be assurance that an assay will provide a reliable and practical monitoring device to prevent violated residues in food. Most of the questions raised in the comments arose because the 1973 notice contained only a brief description of the assay evaluation criteria and procedures. Accordingly, the following discussion sets forth, as in the 1977 notice, the evaluation criteria and their bases.

Any assay used for regulatory purposes is characterized by a set of attributes that determine its quality: dependability, practicability, specificity, accuracy, and precision. These regulations specify objective criteria for these attributes. A proposed assay must be shown to meet these criteria during studies in a single laboratory and also in interlaboratory studies in government regulatory laboratories. The latter requirement is essential because the assays are to be used in Federal regulatory laboratories (FDA, USDA) and State laboratories, and the Commissioner must determine in advance that an assay will perform satisfactorily in more than one such laboratory. The proposed regulations specify that the interlaboratory validation study must be carried out in those laboratories (USDA and FDA) that will be using the method in surveillance and enforcement programs.

The steps in obtaining approval of an assay are—(i) assay development and study by the petitioner to deter-

mine whether the assay satisfies the acceptability criteria; (ii) FDA review of the petitioner's study to determine suitability of the assay for evaluation in interlaboratory study; and (iii) interlaboratory validation study, again with approval contingent upon satisfaction of acceptability criteria.

B. SOURCES OF DATA TO SUPPORT THE ASSAY

Data from studies of an assay using three types of samples are necessary to support approval. The petitioner must prepare and analyze samples of target tissue to which known and varying concentrations of marker residue, including R_m and concentrations above and below R_m , are added ("spiked" tissues). The petitioner must also compare responses obtained from assays using these tissues with responses obtained from assays of target tissues known to be free of marker residues (control tissues). In plotting observed instrumental response versus concentration of marker residue, i.e., in constructing the analytical curve from these data, as many samples as possible should be run, preferably by different analysts, because interlaboratory validation of the assay will eventually be required. The variability among different analysts can be determined at the developmental stage and adjustments made before the assay is submitted for FDA review.

Before submitting an assay to FDA for review, a sponsor should be satisfied that it meets all of the evaluation criteria and also that it is consistent with general principles of good analytical practice. Past experience shows that a petitioner's failure to follow good analytical practices during initial assay studies often results in interlaboratory failure even though the initial results may appear satisfactory during a paper review of the assay by FDA. A petitioner should assure that no results enter the construction of an analytical curve when it is known that the results were obtained using other than acceptable principles of analytical practice.

In addition to the spiked tissue tests, a petitioner must also submit data showing the applicability of the proposed assay to target tissues taken from target animals treated with the sponsored compound ("dosed" tissues). Validation of the assay requires dosed tissue samples that contain the marker residue at a level approximating R_m . The petitioner is required also to submit a standard analytical curve constructed by taking the marker residue of known purity at different concentrations, determining the response, and plotting the relationship.

C. SUBMISSION OF DATA

Agency resources for reviewing and validating assays are limited. The Commissioner therefore would establish in this proposal a precise format for submitting the data to support acceptance of an assay. It is a well-recognized principle, applied both by the courts and administrative agencies, that a standard format can be required for pleadings, requests for licenses, and other applications. This format may also designate special types of information that must be contained in the submission. Therefore, the agency would refuse to accept a petition or review an assay when the request for approval fails to conform to the format outlined below.

1. *Assay description and petitioner's evaluation.* The petitioner must provide a complete description of the assay to allow FDA to determine whether it is potentially acceptable. Because this threshold determination of acceptability will trigger an extensive interlaboratory validation procedure, the discussion must be sufficiently rigorous to minimize waste of agency resources. Therefore, the submission must discuss in detail—

(a) What equipment and reagents are necessary;

(b) How the assay is performed; and

(c) How the assay complies with the criteria of dependability, practicability, specificity, accuracy, and lowest limit of reliable measurement prescribed in proposed § 500.90(d) and discussed under section VIII. E. below in this preamble.

2. *Data.* The data and worksheets, including spectrograms, chromatograms, etc., from the spiked tissue, dosed tissue, and control tissue analyses and the external standard and quality control data are also necessary for the preliminary review of the assay to determine whether it actually complies with the evaluation criteria.

D. FDA REVIEW

The agency will conduct a paper review of a petitioner's submission to determine whether an assay complies with the acceptability criteria. These regulations generally alert potential petitioners to the applicable statutory standards and criteria, which should permit a petitioner to assess preliminarily the acceptability of an assay before filing a petition, and thereby reduce the agency's workload.

If on preliminary review an assay appears to comply with the evaluation criteria, it will then be subjected to the interlaboratory assay validation study to determine whether it is indeed a practicable and reliable regulatory tool. Should the initial review establish the assay fails to meet these criteria, the petition will be denied. A conclusion that an interlaboratory

assay validation study should be initiated, however, in no way guarantees that a proposed assay will eventually be approved.

The assay criteria and attributes set out in the proposed regulations represent and amalgamation of statutory and scientific standards. Because a variety of terms are in use, the Commissioner is proposing to adopt and define the basic terms in the regulations in simple language for the sake of clarity. Accordingly, an assay must meet the following attributes and criteria for approval:

1. *Dependability.* Dependability is the likelihood that the proposed assay will not fail to yield a result because of uncontrollable features inherent in its design. Almost all assays will, on occasion, fail to yield any result. Often this failure occurs due to mishandling by the analyst, but sometimes failure may be the result of some aspect of the assay itself that may have been inadequately studied and defined or that cannot be controlled. For example, assays depends upon the availability of a standard against which measurements are compared. If the integrity of the standard depends on certain environmental factors (e.g., purity of the solvent in which it is maintained, temperature, light intensity, etc.) and these factors are understood, it may be possible to prevent assay failure. If this dependence is not known, however, the assay may fail and may fail often depending on the effect of the environmental factor of importance on stability of the standard. In this example, failure can mean a highly inaccurate result, assuming some fraction of the standard's integrity is retained, or it can mean no result at all, assuming complete loss of integrity.

Assays used to monitor carcinogenic residues in food must be free of such uncontrollable features. Failure of a proposed assay to yield results during the petitioner's assay development studies or interlaboratory validation study can be a ground for refusing to accept the assay and for denying the underlying petition. Accordingly, the regulations require a petitioner to furnish information on, and provide an explanation of, runs of the assay that are begun, but never finished, during the analyses of samples used to construct the submitted analytical curve.

2. *Practicability.* Proposed § 500.90(d)(2) defines the practicability attribute as follows:

The assay is considered practicable only if it is suitable for routine use in a government regulatory laboratory. The time required to complete the assay must be consistent with regulatory objectives, monitoring, compliance, etc. All supplies, equipment, reagents, standards, and other materials necessary to conduct the assay must be either commercially available, or readily available from the petitioner, on request. The Commission-

er will withdraw approval of any assay and initiate regulatory action against the sponsored compound if such a condition of the compound's approval is no longer satisfied.

The Commissioner has established criteria for practicability in terms that relate specifically to the nature of the laboratories in which the assay will be used, i.e., regulatory laboratories where the time and availability of equipment and reagents are critical factors in their ability to perform satisfactorily the mandate functions.

The inability to use an assay at a regulatory laboratory because a needed reagent is not readily available or because excessive time is required to complete the assay presents potential risks to public health and, therefore, precludes approval of the assay. Obviously, some assays will require some unique items, particularly reference standards. The Commissioner agrees with comments suggesting that, as long as a sponsor makes reference standards available to all persons having an interest, this requirement of the regulation will be met. A commitment to supply reference standards when they are not commercially available may be made a condition of the sponsored compound's approval, and failure to supply the governmental or other laboratories as required is a basis for withdrawing a compound's approval. The Commissioner concludes that an assay is not practical if it is dependent on the use of any other unique equipment or materials that are not commercially available.

3. *Specificity.* The regulations provide that, for an assay to be accepted, and observed response must be due to the compound that is being measured, and to that compound only. It is a fundamental part of the development of an assay to determine whether or not it possesses this important attribute. Among analytical chemists and biochemists, an "assay" that does not demonstrate this attribute is of little value; and indeed, in a regulatory setting, such an assay could be dangerously misleading. For this reason, the Commissioner has established rigorous specifications for this attribute.

In general terms, "specificity" refers to the uniqueness of the relationship between the observed effect (or response) and the applied stimulus (in this case the chemical under analysis). In analytical chemistry and biochemistry, the term "specificity" is commonly used to refer to the uniqueness of a response resulting from the application of a stimulus having specific characteristics; that is, the term has a qualitative dimension only in that it does not relate to either the quality of response or stimulus or to the nature of the relationship between response and stimulus. Both of the latter criteria, which might also be considered as-

pects of specificity, are central to good analytical practices. The regulations consider both the qualitative and quantitative aspects and groups them together under the general attribute of "specificity." The Commissioner's objective is to assure that, whatever the observed response, it is uniquely related to the marker residue both qualitatively and quantitatively.

The establishment of an analytical curve (not simple a standard curve, but one derived from actual measurements obtained on tissue samples containing known amounts of marker residue at different levels and from control samples) provides the means to determine whether the responses produced by an assay are single-valued, as they must be if an assay is to be considered fully specific. Only assays that yield continuously increasing or decreasing analytical curves will satisfy the criterion of single-valuedness. The criterion of single-valuedness, or monotonicity, must be established for the full range of possible contamination of residues, i.e., from zero residue levels up to levels of residues that will be present if no withdrawal period is observed.

The regulations require that the assay contain a sufficient number of independent measurements utilizing independent physicochemical principles to assure specificity (i.e., the identity of the marker residue must be confirmed). There are many ways in which specificity can be demonstrated experimentally. A petitioner may use highly sophisticated research tools to demonstrate that a proposed assay is specific in the ways discussed above. However, a regulatory analyst, using an approved assay, must have available some technique that can provide assurance that an observed response is due to the marker residue. At present, although there are other possibilities, mass spectrometry is probably an ideal choice for acquiring the requisite specificity. Some determinations (e.g., those requiring enzymes) may have an inherent high specificity, but others have low specificity (e.g., gas, thin-layer, and liquid chromatography) and require other independent types of measurements to achieve the requisite confirmation of identity. The requirement in the regulations that an assay contain a sufficient number of independent measurements negates the effect of a false positive measurement.

4. *Accuracy.* Assays yield measurements of concentration that are in some proportion to the true concentration of the compound being measured. The ratio of the measured to the true concentration of the compound, expressed as a percentage, is a measure of the assay's accuracy. The accuracy of an assay is determined from data collected from two types of studies.

One type of study must yield graphs of the observed concentrations of the marker residues, as determined by analysis, plotted against the corresponding levels of marker residue added to the analyzed target tissue. The plot is to be used to ascertain whether the assay meets the above-specified criteria.

The other type of study must measure the assay's recovery of marker residue from target tissue of target animals exposed to the sponsored compound. If target animals exposed to a radiolabeled sponsored compound produce radiolabeled marker residue, it will always be possible to measure the proposed assay's recovery by directly comparing measurements obtained from the proposed assay and appropriate measurements of radioactivity. If it is not possible to have radiolabeled marker residue, the true concentration of marker residue in target tissue from exposed animals must be determined by exhaustive extraction of such tissues after appropriate standard treatments which hydrolytic enzymes.

The regulations prescribe specific accuracy criteria. The average of observed responses must be between 60 and 110 percent of the true level of the marker residue when the lowest limit of reliable measurement, L_m , which is described in the next paragraph, is less than 100 parts per billion and between 80 and 100 percent of the true value if L_m is equal to or greater than 100 parts per billion. These criteria need not be satisfied throughout the full range of the analytical curve, but they must be satisfied in the range from L_m to three times L_m . These criteria are consonant with current good analytical practice.

5. *Lowest limit of reliable measurement (L_m).* To be accepted for regulatory purposes, an assay must be able to distinguish, with a high degree of confidence, target tissues that contain levels of the marker residue at or above R_m from target tissues that do not. This distinction must be reproducible and capable of supporting legal action when violative residues of the sponsored compound occur.

To provide the necessary degree of discrimination, the regulations require that the assay be capable of producing when the marker residue is present in target tissue at or above R_m a response that is, with 99 percent confidence, different from the response in nontreated (control) target tissue, i.e., the difference between the responses of control target tissue and target tissue containing the marker residue at or above R_m is, with 99 percent confidence, greater than zero.

The actual lowest limit of reliable measurement for the proposed assay is termed the " L_m ", and it will be determined by reference to the analytical

curve of the proposed assay. The L_m will be the level of marker residue that gives a response above the expected blank value that is greater than, or equal to, 0.75 times the spread of the 99 percent confidence limits of a single assay response measured parallel to the observed assay response axis (see Plate IV in proposed § 500.90(d)(5)).

If the determined lowest limit of reliable measurement, L_m , of the proposed assay is equal to or less than the R_m , this criterion will be considered satisfied. This procedure takes into account the attribute of precision. Thus, an assay that satisfies this criterion will provide a reliable regulatory tool to enable the Commissioner to discriminate safe from unsafe food.

The Commissioner recognizes that the term "method sensitivity" is widely used to describe the lowest level of a compound under analysis that can be detected and measured with an analytical assay. Indeed, the original proposal used this term to describe what is now termed "the lowest limit of reliable measurement." However, there is some confusion surrounding the term "sensitivity." It derives in part from the fact that the term has been used in two senses: (1) As the lowest level of a compound that can be detected by an assay; and (2) as the lowest level of a compound that can be measured reliably by an assay. In fact, the correct meaning of the term "method sensitivity" is unrelated to a particular level of compound concentration, but rather relates to the ratio of change in instrument response to the change in compound concentration. The term "sensitivity" has therefore been dropped from this proposal. The Commissioner has adopted the term "lowest level of reliable measurement" because that term more accurately describes the attribute.

In response to comments urging that any "detected residue" should be subject to regulatory control, the Commissioner points out that it is an inherent characteristic of almost all analytical methods that compounds can sometimes be detected at levels below the levels at which they can be reliably measured. More precisely, detection of a compound simply means that there is some instrument response above background levels that could be the compound of interest, but this response cannot be considered a reliable measurement or identification of the compound (Ref. 9). Since public protection is the goal, the Commissioner must be in a position to document conclusions based on analytical data, often in a court of law. A major aim of these proposed regulations is to assure that assays used to obtain such data can reliably measure residues. Hence, the Commissioner concludes that the discriminant for samples containing

potentially violative exogenous marker residues must be the lowest limit of reliable measurement, L_m , of the approved assay.

Several comments on the 1977 notice stated that the definition of L_m and the procedures for determining L_m were incompletely specified. Most comments applauded the Commissioner's attempts to specify analytical attributes and agreed that the criteria were in accord with current good analytical practice. Several comments suggested that further specification of the interagency validation procedure might be desirable, and thus offered assistance if detailed guidelines were to be drafted in the future.

The Commissioner agrees with these comments and is proposing to define L_m in detail in the regulation as described above.

There was some confusion regarding the definition of "accuracy," and one comment stated that the regulations confused the terms "accuracy" and "recovery." The Commissioner agrees that in the February notice the term "accuracy" is used in a manner equivalent to what is normally termed "recovery." The term "accuracy," however, is more in line with analytical chemistry terminology, and the differences between accuracy and recovery occur only when dealing with absolute analytical methods, which will not be of concern here. For these reasons the Commissioner is proposing to retain the term "accuracy."

E. INTERLABORATORY VALIDATIONS OF ASSAY

Although FDA will review the assays for each sponsored compound, the actual regulatory field examination of foods of animal origin will be primarily performed by USDA under the Meat and Poultry Products Inspection Acts, and by the States under the Public Health Service Act. The Food and Drug Administration performs a complementary regulatory function: Followup analytical and field investigations of violative residues to assemble evidence for use in regulatory actions.

The initial paper review by FDA of material in a petition permits the agency to make initial determination of the acceptability of an assay. Adequate protection of the public health, however, requires assurance that these assays will function in the government's regulatory laboratories. Therefore, these regulations also prescribe the procedure that will be used to assure that an assay is appropriate for use as a regulatory tool by government laboratories.

The Commissioner is proposing to require that three government laboratories (two FDA facilities and one USDA facility) independently validate

an assay before it can be determined that use of a sponsored compound can be approved. This requirement is necessary because of the delicate nature of the assays, their importance in assuring that no residues of carcinogenic concern will occur in food of animal origin, and the practical limitations on the government's capacity to monitor food production and distribution. These three laboratories must study an assay sufficiently to assure that all criteria are met and that the petitioner has drawn correct conclusions in the submission about the assay's acceptability.

A comment on the 1977 notice suggested that FDA adopt the Association of Analytical Chemists' procedure for validating the assays. At this time, the Commissioner believes the AOAC process is inappropriate. It is very time consuming and permits testing in laboratories other than those of FDA or USDA, where the assay will be used as a regulatory tool. Because of the delicate nature of the assays covered by these regulations and the time periods imposed for evaluating applications, the Commissioner declines to adopt the AOAC procedure. When the agency gains experience with the assays, however, the Commissioner will reconsider adopting in the regulations the AOAC assay validation process.

F. CONCLUSION

If an assay complies with the criteria described above and prescribed by the proposed regulations, and compliance can be verified under actual conditions of regulatory use (see section IX of this preamble), the Commissioner will approve the assay. A full description of the approved assay will be published in the FEDERAL REGISTER upon approval of the petition, in accordance with the provisos to the anticancer clauses and section 512(i) of the act.

IX. WITHDRAWAL PERIODS

A. INTRODUCTION

The regulations propose to define the withdrawal period for a sponsored compound as the time required, after cessation of target animal exposure to the sponsored compound, for the marker residue to deplete to L_m in the target tissue. The withdrawal period must also be compatible with actual conditions of livestock management and reasonably certain to be followed in practice. Because of the way in which the regulations define "marker residue," "target tissue," and " L_m ," the use of a sponsored compound in accordance with the prescribed withdrawal period will assure that no carcinogenic residues of the compound will be present in human food derived from treated animals. At any point after cessation of exposure but before

the determined withdrawal period, treated animal tissues must be considered as containing residues of carcinogenic concern. Thus, the withdrawal period specifies the length of time after the last treatment with a sponsored compound in which animals must not be slaughtered for food and during which milk or eggs must be discarded.

Several comments on the 1973 proposal addressed the procedures for establishing post treatment withdrawal periods. Some contended that the requirement for tissue equilibration (no change in concentration of residues in the tissue with change in time) with residues in the experimental procedure for establishing withdrawal times was inappropriate for therapeutic drugs. Other comments suggested that the withdrawal periods be established to assure the absence of residues from edible tissues only, because they are the ones destined for human consumption. Some of these comments expressed concern about the practicality of applying confidence-interval techniques to establishing withdrawal periods, especially when dealing with large animals. Finally, one comment requested clarification on whether confidence limits or tolerance limits were to be used in setting withdrawal periods. The following paragraphs contain the Commissioner's response.

B. DATA TO SUPPORT WITHDRAWAL PERIODS

The depletion studies required by the proposed regulations to establish withdrawal periods must take into account the biological variability among animals and other variables, e.g., assay variability, that may influence depletion times.

Residue depletion studies must be conducted under conditions of the sponsored compound's maximum proposed use. If a sponsor can demonstrate target tissue equilibration with the marker residue, however, a shorter period of administration than the maximum dose for the longest proposed conditions of use will be permitted. The conditions of the study must also simulate actual use conditions. The commissioner agrees that a compound intended for therapeutic use need only be administered according to the compound's maximum conditions of proposed use. The proposed regulatory assay must be used to measure the marker residue in the target tissue, including milk and eggs where appropriate, because it is this assay that will be used for regulatory monitoring.

All relevant data and evaluations must be submitted with the petition, along with a graphical presentation of the tissue depletion curve (concentra-

tion of marker residue in target tissue versus time).

The analysis of the data must include the estimated depletion curve, which in most instances may be adequately approximated by a first-order decay process. The statistical tolerance limit for the 99th percentile will be determined for the samples from individual target animals, and the time of intersection of this limit with the L_m value will be determined. The withdrawal period is the interval of time between the last administration of the compound and the time of intersection of this statistical tolerance limit on the observations and the L_m of the approved regulatory assay, plus an additional interval determined by rounding out this time interval to provide a practical withdrawal period compatible with animal management practices (Ref. 79).

For example, if the time of intersection of the statistical tolerance limit for the 99th percentile on the individual tissue determinations and the L_m for the marker residue is 39 hours, the withdrawal period (preslaughter interval) would be established as 2 days. In the case of milk samples, if the time of intersection were 63 hours, a withdrawal time of 72 hours (discard of six milkings) would be established.

The use of a compound will not be approved if the necessary withdrawal period is incompatible with animal management practices. For example, the use of a compound in lactating animals will not be approved if the required withdrawal time for milk exceeds 96 hours (4 days) because the management practices of milk production make observance of such discard times unlikely, or at least not reasonably certain, to be followed in practice.

When the marker residue is an endogenous compound, the withdrawal period is the time after cessation of administration of the sponsored compound required for the norm to be restored (see sections VII., C, D, and E above) and extended if necessary to be compatible with conditions of livestock management. The validated regulatory assay must be used to collect this information.

C. RATIONALE FOR USING THE STATISTICAL TOLERANCE LIMITS APPROACH

To establish that carcinogenic residues are absent from edible tissues of food-producing animals treated with the sponsored compound, the Commissioner must have information about the rate of residue depletion and the inherent metabolic variabilities among individual target animals.

The Commissioner is proposing to use statistical tolerance limits for this section to provide the degree of confidence (99 percent) necessary to ensure protection of the public health. Confi-

dence limits, as used elsewhere in this regulation, estimate population parameters (e.g., 99 percent confidence limits will result in an interval that contains the true response rate 99 times out of 100). Statistical tolerance limits, however, are used to provide a specified degree of confidence that a specified portion of a population is below a given value (e.g., 99 percent confidence that, if the withdrawal period is followed, 99 percent of the target tissues will contain residue levels below L_m).

One comment on the February notice argued that withdrawal periods are unenforceable and contrary to the normal practices of the meat industry.

Section 512(d)(2)(D) of the act (21 U.S.C. 360b(d)(2)(D)) provides expressly that, in determining whether a compound is approvable, the Commissioner is to consider whether the conditions of use of a sponsored compound are reasonably certain to be followed in practice. Historically, safe conditions of use have included a preslaughter withdrawal period for many compounds intended for food-producing animals, and the compound's labeling requires that this period be discussed. In the Commissioner's opinion, withdrawal periods are being followed for most compounds, although some violation will always occur. However, one of the primary functions of this regulation is to improve the procedure for setting withdrawal periods and thereby provide FDA with stronger tools for enforcing compliance with withdrawal periods and for taking regulatory action if violative residues are detected.

Three comments raised questions about the use of the term "99 percent confidence interval." Another comment suggested that using the 99 percent confidence limits on the data in calculating the withdrawal period is too conservative and will result in unduly long withdrawal periods.

To clarify, the Commissioner has defined the term "99 percent confidence interval" in the proposed definition section. The Commissioner does not agree that the proposed approach is "too conservative." By using the statistical tolerance limit on the data, the Commissioner ensures with 99 percent confidence that in 100 sampled tissues there is no more than one violative residue when the labeled withdrawal period is followed. Minimizing the likelihood that a violative residue will occur is an important public health objective, and the Commissioner maintains that the procedures provided in these regulations (the use of a validated assay to collect residue data under proposed conditions of use; the use of statistical tolerance limits to establish withdrawal periods; and the use of good animal husbandry practice to aid

in determining whether withdrawal periods will actually be followed) provide the proper balance in setting a withdrawal period that ensures that (1) the food consumed, if the withdrawal period is followed, will be safe, (2) the withdrawal period is in accord with good animal husbandry practice and will be followed, and (3) violations can and will be detected.

Two comments raised questions about collecting data with the validated assay in the tissue depletion studies to determine the withdrawal period. Because assays are not validated until the final stages of a petition's review, the comments stated that it is impossible to collect data to establish a withdrawal period with the validated assay.

The Commissioner disagrees. For reasons already stated, the withdrawal period must be established with the assay for which approval is sought. Further, collecting the data by any method not proposed for validation imposes a repetitive administrative burden on the agency that is costly and unwarranted. When the data are collected with a different assay, the agency must first assess the quality of the data-collection assay and the appropriateness of the data submitted. Then it must attempt to compare the data-collection assay with the one proposed for validation. In the Commissioner's opinion this simply is an unacceptable waste of limited government resources; therefore, the Commissioner rejects any suggestion that the withdrawal period be established using an assay that is not submitted for validation.

A comment on withdrawal periods for endogenous substances contended that it is unnecessary to show when the norm is restored. The comment argued that merely showing that the norm is restored is adequate, regardless of when the restoration takes place. The Commissioner disagrees because the rate of the norm's restoration is an important consideration in setting the withdrawal period. It determines when food derived from treated target animals will be safe for human consumption. Only with such information can the necessary withdrawal periods be established.

Finally, two comments found unclear the statement that sponsors shall submit all raw data collected in determining withdrawal periods. They suggested that the regulation be reworded to require submission of all appropriate supporting data. The Commissioner agrees and intends to require submission only of all data that are relevant to determining withdrawal periods. Relevant data include, for example, descriptions of all assays on specific tissues, worksheets, and calculations, as well as daily calibration

data (i.e., standard curves, spiked tissue, and background values).

X. COMPLIANCE

When a target tissue is examined with the approved assay and is found to contain the marker residue at or above its L_m , the Commissioner will conclude that the carcass from which the target tissue was taken contains carcinogenic residues and, therefore, that the sponsored compound has been used in violation of the act.

When target animals are found to contain an endogenous marker residue at or above the 99th percentile of the norm (Plate III in proposed § 500.89(c)(1)(ii)), they will be designated as potentially violative. Because there is at least a 1-percent probability that untreated target animals will contain endogenous marker residue above the 99th percentile of the norm, further investigation will be necessary to determine whether the sponsored compound has been used in violation of the act. The function of this investigation will be to determine whether the potentially violative sample originated from target animals whose median level of the endogenous marker residue is greater than the median of the norm (and hence, the need for a regulatory assay having an L_m at the 33d percentile of the norm). The proposed regulation also requires that, before regulatory action is begun, it must be determined whether or not the approved compound was used to treat the target animals under investigation.

Guarding against any shifts in the norms should allay all fears expressed in comments that monitoring only at the 99th percentile, as proposed, would not permit detection of any general increase in human exposure to potentially carcinogenic endogenous substances.

Food containing residues of any approved sponsored compound that has been used in accordance with the conditions of the compound's approval is specifically excluded from the adulteration provisions of section 402(a)(1) of the act by sections 409(a), 512(k), and 706(a). Thus, administration of the sponsored compound according to the approved labeling is a defense to any criminal action that might arise for a violation of section 402(a)(1) of the act. However, within the meaning of section 402(a)(2) of the act, such food is adulterated if it contains a residue of the approved sponsored compound which is unsafe within the meaning of sections 409, 512, and 706. A residue is unsafe under those sections when it occurs in food at levels above those approved for use, and any residue found at levels equal to or above the L_m is unapproved and therefore illegal. To establish that the resi-

due is unsafe (an adulterant) within the meaning of sections 409 and 512 of the act, the agency must establish that the detected residue actually is a residue of the sponsored compound; and when the agency can prove this point, it has proved that the food is adulterated as a matter of law.

The proposed regulation requires each assay to meet specific criteria before the Commissioner will approve the sponsored compound or use, and an assay satisfying these criteria will permit the agency to discriminate between target tissue background responses and responses due to the marker residue. Levels of residues that are below the L_m value cannot be distinguished from background with confidence, and the results of these findings are inadequate to support a regulatory action. On the other hand, when marker residues are detected and measured at or above L_m with the approved regulatory assay, this finding will unquestionably support regulatory action since it constitutes evidence that the food is adulterated within the meaning of section 402(a)(2) of the act. (See *United States v. Ewing Bros. Co., Inc.*, 502 F.2d 715, 725-726 (7th Cir. 1974), cert. denied 420 U.S. 945 (1975).) Moreover, a finding of a violative residue will warrant further administrative action because it will constitute a prima facie case that the compound has not been used in accordance with its conditions of approval, and the agency will conduct a further investigation to determine what additional regulatory action, if any, is appropriate.

XI. WAIVER OF REQUIREMENTS

The proposal would permit the Commissioner, in response to a petitioner's request or on the Commissioner's own initiative, to waive, in whole or in part, any of the foregoing requirements for the scientific evaluation of sponsored compounds that have the potential to contaminate human food with residues whose consumption could engender a human risk of carcinogenesis. It has long been settled that an agency may adopt a rule shown to be appropriate for the generality of instances and leave the correction of injustices to applications by those concerned (e.g., *National Nutritional Foods Ass'n v. Food and Drug Administration*, 504 F.2d 761, 784 (2d Cir. 1974) cert. denied 420 U.S. 946 (1975)). For these reasons, the Commissioner has expressly included the waiver provision. The Commissioner advises, however, that a waiver will be granted only in exceptional circumstances, and, as the regulation provides, the basis for any waiver must be documented.

XII. IMPLEMENTATIONS

The criteria set forth in the regulations are based on generally recognized scientific principles for testing and evaluating chemical compounds for potential carcinogenesis. Congress contemplated that FDA would adhere to these principles when it enacted the Food Additives Amendment of 1958 and the Animal Drug Amendments of 1968 (21 U.S.C. 348 (b) and (c) and 360b (b) and (d)).

The 1973 proposal would have applied the regulatory requirements to all new applications (basic or supplemental) filed or approved after the effective date of the regulations. Prior approvals were to be dealt with on a class-by-class basis, and the classes, in order of decreasing priority, were known carcinogens, suspected carcinogens, and continuing through all compounds previously approved on the basis of zero tolerance. These were to be reviewed as part of the agency's general safety review for previously approved new animal drugs.

The February 1977 notice announced that the regulations would apply to all new animal drug applications, feed additive petitions, and appropriate color additive petitions, including appropriate supplemental applications, submitted after the effective date of the regulations. In addition, the regulations would apply to all pending petitions and applications unless the Commissioner determined that compliance with the act could be adequately assured by requiring completion of one or more of the required studies subsequent to approval.

Because some standards are needed for the day to day evaluation of petitions under sections 409 and 512, FDA has applied all the basic aspects of these proposed standards on a case-by-case basis for several years (e.g., diethylstilbestrol published in the FEDERAL REGISTER of November 26, 1976 (41 FR 52105) and the nitrofurans published in the FEDERAL REGISTER of May 13, 1976 (41 FR 19906) and August 17, 1976 (41 FR 34883)). It continues to apply them to compounds currently being evaluated for approval or subject to proposals to withdraw approval.

All previously approved applications for compounds will be reviewed as part of the cyclic review of the safety of marketed animal drugs, which will be described in detail in a separate forthcoming notice in the FEDERAL REGISTER. When the agency finds deficiencies in the data supporting a prior approval, it will issue either a FEDERAL REGISTER notice or a letter in accordance with section 512(e) of the act. The criteria of these regulations will be used to determine whether the data supporting applications are acceptable and adequate.

One comment argued that the final regulations, when promulgated, should apply only to all applications pending approval at that time. For previously approved compounds, the comment stated that the holders of the approvals should be required to submit data for at least a threshold assessment. For any compound found to require submission of additional data as set forth in the proposed regulations, the comment argued that the petitions for those compounds should immediately be suspended. Another comment, however, argued that the Commissioner lacks authority to apply the regulations to any previously approved compound without new evidence.

The Commissioner disagrees with both comments. The act expressly deals with these situations. It defines the new evidence that the Commissioner can consider in determining whether a previously approved compound is safe to include: "Tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available . . . when the application was approved" (section 512(e)(1)(B)). The tests proposed in these regulations are necessary to show that a sponsored compound is safe under the act. For that reason, the absence of data satisfying the above criteria, in conjunction with the evidence already available about a compound, clearly can support the withdrawal of approval of an application. A reasonable implementation program is, of course, necessary to avoid chaos in the marketplace, permit an efficient application of the criteria, and provide the maximum public health protection. Proposed § 500.98 provides for such a plan.

XIII. CONCLUSION

The proposed regulations are designed to provide a comprehensive, systematic data collection procedure for evaluating the carcinogenic potential of chemical compounds intended for use in food-producing animals and to ensure that edible tissues derived from such animals are safe. The system is constructed with severable portions that can be modified or replaced as the capacity of science to resolve, or the need for resolving, the issues improves.

This regulation establishes a multi-step procedure for evaluating the carcinogenic risk presented by a sponsored compound and criteria for the conduct of each step. In developing the steps and criteria, FDA applied high standards of scientific acceptability and public health protection. In the agency's view, each decision reflected in the regulations can be de-

fended on that ground. The agency recognizes, however, that the totality of these decisions may impose a set of requirements that cannot feasibly be met by sponsors of compounds—for economic, technical, or other reasons. The agency, therefore, invites comments on whether the regulation imposes requirements that, as a totality, are unreasonable; and, if so, comments are invited on what specific provisions should be modified so that the requirements imposed by the modified regulation would be reasonable. Proposed modifications should be analyzed with respect to their impact on protection of the public health. No modification or set of modifications would be acceptable if its effect would be that the regulation would fail to provide satisfactory assurance that compounds approved for use pursuant to the regulation will not subject humans to any significant increase in carcinogenic risk.

The Commissioner has carefully considered the environmental effects of the regulations and, because this action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk. (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

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Therefore, under the Federal Food, Drug, and Cosmetic Act (sections 402, 403, 409, 512, 701(a), 706, 52 Stat. 1046-1048 as amended, 1055, 72 Stat. 1785-1788 as amended, 74 Stat. 399-403 as amended, 82 Stat. 343-351 (21 U.S.C. 342, 343, 348, 360b, 371(a), 376)) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes to amend Chapter I of Title 21 of the Code of Federal Regulations as follows:

PART 70—COLOR ADDITIVES

1. In Part 70, by amending § 70.50 by adding new paragraph (c), to read as follows:

§ 70.50 Application of the cancer clause of section 706 of the act.

(c) Color additives for use as an ingredient of feed for animals that are raised for food production. Color additives that are an ingredient of the feed for animals raised for food production must satisfy the requirements of subpart E of Part 500 of this chapter.

PART 500—GENERAL

2. In Part 500, by adding a new Subpart E, consisting of §§ 500.80 through 500.98, to read as follows:

Subpart E—Criteria and Procedures for Evaluating Assays for Carcinogenic Residues in Edible Products of Animals

Sec.

500.80 Chemical compounds used in food-producing animals: Procedures and criteria for determining acceptability of assays for carcinogenic residues in edible products.

500.83 Definitions.

500.84 Metabolic study in target animals to identify residues for chronic testing.

500.85 Criteria for test animal selection; comparative metabolic studies to aid in assessing the carcinogenicity of intractable residues.

500.87 Chronic testing.

500.89 Metabolic study to identify the marker residue and target tissue.

500.90 Evaluation and approval of a regulatory assay.

500.92 Withdrawal periods.

500.94 Publication of the approved regulatory assay.

500.95 Compliance.

500.96 Waiver of requirements.

500.98 Implementation.

AUTHORITY: Secs. 402, 403, 409, 512, 701(a), 706, 52 Stat. 1046-1048 as amended, 1055, 72

Stat. 1785-1788 as amended, 74 Stat. 399-403 as amended, 82 Stat. 343-351 (21 U.S.C. 342, 343, 348, 360b, 371(a), 376).

Subpart E—Criteria and Procedures for Evaluating Assays for Carcinogenic Residues in Edible Products of Animals

§ 500.80 Chemical compounds used in food-producing animals: Procedures and criteria for determining acceptability of assays for carcinogenic residues in edible products.

(a) Scope of this subpart. (1) The Food, Drug, and Cosmetic Act requires that compounds intended for use in food-producing animals be shown to be safe and that food produced from animals exposed to these compounds be shown to be safe for human consumption. The statute prohibits the use in food-producing animals of any compound found to induce cancer when ingested by human or animal unless it can be determined by methods of examination prescribed or approved by the Secretary (a function delegated to the Commissioner of Food and Drugs under § 5.1 of this chapter) that no residue of that compound will be found in the food produced from those animals under conditions of use reasonably certain to be followed in practice.

(2) Petitions for the approval of the use of a compound in food-producing animals must include adequate data for establishing the absence of residues of carcinogenic concern in the food produced from those animals.

(3) This subpart establishes the following: (i) The lowest limit of reliable measurement for the regulatory assay required for carcinogenic residues by sections 409(c)(3)(A), 512(d)(1)(H), and 706(b)(5)(B) and sections 409(b)(2)(D), 512(b)(7) and 706(b)(5)(A)(iv) of the act.

(ii) The procedures and criteria for evaluation and approval of such assays.

(iii) The procedures and criteria for establishing the premarketing withdrawal period for use of compounds likely to produce such residues.

(4) This subpart applies specifically to the use in food-producing animals and in their feed of compounds that have the potential to contaminate human food with residues whose consumption could present a human risk of cancer. The determination of this potential will be based on considerations of chemical, biochemical, physiological, and toxicological data derived from the scientific literature and from other sources available to the petitioner or to the Commissioner and on the proposed patterns of compound use. This subpart establishes a sequential process for the collection of other chemical, biochemical, physiological, and toxicological data pertinent to the

safety of the proposed use of the sponsored compound.

(5) This subpart does not apply to essential nutrients.

(b) *General approach.* (1) When the Commissioner determines that a sponsored compound has the potential to contaminate food from food-producing animals with residues (the sponsored compound, metabolites, or any other substances formed in or on food (e.g., endogenous substances) because of the compound's use) whose consumption could present a human risk of cancer, the following procedure for data collection and evaluation will apply:

(i) A metabolic study in the animals in which the sponsored compound is intended for use (target animals) designed to identify metabolites of concern and, when appropriate, to determine if normal levels of carcinogenic or potentially carcinogenic endogenous substances are affected.

(ii) Metabolic studies of the sponsored compound in different species of experimental animals designed to aid in selecting the appropriate species for chronic toxicity testing and in assessing the carcinogenicity of residues that cannot practicably be tested individually (intractable residues).

(iii) Chronic testing in test animal to assess the carcinogenic potential of residues of the sponsored compound, to furnish data suitable for statistical treatment by the linear extrapolation procedure of Gross, M. A., O. G. Fitzhugh, and N. Mantel, "Evaluation of Safety of Food Additives," *Biometrics*, 26 (2): 181-194 (1970) and Hoel, D. G., et al., "Estimation of Risks of Irreversible, Delayed Toxicity," *Journal of Toxicology and Environmental Health*, 1:133-151 (1975)¹ (which are incorporated by reference), and to permit the no-residue requirement of the act to be operationally defined for purposes of establishing a lowest limit of reliable measurement for an assay to measure residues of the sponsored compound.

(iv) A detailed metabolic study of the sponsored compound in target animals designed to identify a specific residue and tissue to serve as indicators (marker residue and target tissue) to determine whether the no-residue requirement of act is satisfied.

(v) Development of a regulatory assay to measure the marker residue in the target tissue at and above the level operationally defined as satisfying the no-residue requirement of the act.

(vi) Establishment of the premarket withdrawal period required for the safe use of the sponsored compound.

(2) If, at any point in the sequential process of data collection set forth in paragraph (b)(1) of this section, the evaluation of the data satisfies the Commissioner that no human risk of carcinogenesis arises from the proposed use of the sponsored compound, the compound will be considered for approval under the general safety provisions of the act for risks other than cancer.

§ 500.83 Definitions.

The following definitions apply to this subpart:

(a) "Sponsored compound" means any drug or additive proposed for use, or used in, food-producing animals.

(b) "Target animals" means the production class of animals in which a sponsored compound is proposed or intended for use.

(c) "Sponsor" means the person proposing or holding an approval by the Food and Drug Administration for the use of a sponsored compound.

(d) "Threshold assessment" means the Food and Drug Administration's review of data and information available about a sponsored compound to determine whether the compound should be subject to regulation under this subpart as well as under the other general safety provisions of the Federal Food, Drug, and Cosmetic Act for risks other than cancer.

(e) "Total residue of the sponsored compound" means all compounds present in edible tissues of the target animal that result from the use of the sponsored compound, including the sponsored compound, its metabolites, and any other substances formed in or on food because of the sponsored compound's use.

(f) "Residue" means any single compound present among the total residue.

(g) "Residue of toxicological concern" means all compounds in the total residue minus any compounds shown to be safe.

(h) "Metabolic studies" means studies designed to identify the residues that occur in edible tissues when the sponsored compound is administered to target animals and to determine the depletion characteristics of the residues.

(i) "Intractable residues" means residues of the sponsored compound that, using the best available technology, cannot be obtained, by isolation, synthesis, etc., in sufficient amounts for carcinogenicity testing.

(j) "Comparative metabolism" means the study of the metabolism of a sponsored compound in different species/strains of test animals that are potential surrogates for man in chronic toxicity testing. Comparative metabolism studies will assist in assessing the toxicity testing. Comparative me-

tabolism studies will assist in assessing the toxicity of intractable residues and in selecting species/strains of test animals for bioassays of selected tractable residues.

(k) " S_0 " means the residue level of a sponsored compound in a total test diet of animals that corresponds to a lifetime risk of cancer of 1 in 1 million in the test animals. For the purpose of this subpart, this S_0 level in the test animal corresponds to a level in the total human diet that is assumed to represent a level of risk to humans of no more than 1 in 1 million over a lifetime.

(l) " S_m " means the level of total residues of carcinogenic concern for a specific edible tissue as determined by the formula in § 500.87(d).

(m) "Marker residue" means the selected residue whose level in a particular tissue is in a known relationship to the level of the total residue of carcinogenic concern in all edible tissues and that can be taken as a measure of the total residue of concern in the target animal.

(n) "Target tissue" means the tissue selected to monitor for residues in the target animal. The target tissue is selected so that the absence of marker residue at or above the required level of measurement (R_m) can be taken as confirmation that the safe, or acceptable, residue level (S_m) is not exceeded in any of the edible tissues of the target animal.

(o) " R_m " means the level of the marker residue(s) in the target tissue when the sum of the levels of the residues of toxicological concern is equal to S_m for the edible tissue requiring the longest time to deplete to its S_m .

(p) "Endogenous compound" means any compound that its metabolically produced by and is present in untreated target animals.

(q) "Essential nutrients" means compounds that are found in the tissues of untreated target animals and required for the animals' growth, and that must be supplied from external sources, e.g., essential amino acids.

(r) "Norm" means the normal background levels of an endogenous substance in untreated target animals, plotted as a cumulative frequency distribution of levels.

(s) " R_m for an endogenous marker residue" means the level of the endogenous marker residue that corresponds to the 33d percentile of the norm.

(t) "Spiked tissue samples" means samples of target tissue to which known amounts of marker residue have been added.

(u) "Control tissue samples" means samples of target tissue from untreated target animals.

(v) "Dosed tissue samples" means samples of target tissues from target

¹Copies may be obtained from: Industry Information (HFV-226), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

animals administered the sponsored compound.

(w) "L_m" means the level of marker residue in target tissue that gives a response greater than, or equal to, 0.75 times the spread of the 99 percent confidence bounds of a single assay response measured parallel to the observed assay response axis based on the analytical curve of the assay. (See Plate IV in § 500.90(d)(5).)

(x) "Assay" means the aggregate of all experimental procedures for measuring the presence of the marker residue of the sponsored compound in the target tissue of the target animals at or above the L_m. It includes the procedures for sample of instrument preparation. The assay must satisfy criteria set forth in § 500.90, and it will usually consist of multiple measurement procedures that utilize different physicochemical principles, e.g., gas chromatography-mass spectrometry, to assure compliance with the regulatory requirements.

(y) "Withdrawal period" means the time required, after cessation of target animal exposure to the sponsored compound, for the marker residue to deplete to L_m in the target tissue.

(z) "Analytical curve" means the plot of the observed responses of the regulatory assay when analyzing "spiked" tissues compared to the amount of marker residue added to the "spiked" tissues.

(aa) "Ninety nine percent confidence interval" means an interval, determined by confidence limits, that is expected to contain the population parameter being estimated 99 times out of 100 times.

(bb) "Upper ninety nine percent confidence limit" means a value that is expected to be equal to or larger than the population parameter being estimated 99 times out of 100 times.

(cc) "Statistical tolerance limits" means upper and lower values between which it can be stated with a given level of confidence that a specified portion of the population will be included.

§ 500.84 Metabolic study in target animals to identify residues for chronic testing.

(a) A metabolic study, described in paragraph (b) of this section, shall be conducted in target animals to provide data on the physicochemical characteristics of residues, their relative proportions, their distribution among the various edible tissues (which include milk or eggs when applicable), and their retention and depletion in animal tissues.

(b) The metabolic target animal study shall satisfy the following minimum requirements:

(1) The metabolic study shall be conducted in target animals with the sponsored compound bearing appropriate

radiolabels, unless other experimental methods permit measurement of total residues with accuracy and precision equivalent to radiolabel methods. Such labels shall assure that residues containing structural moieties of potential carcinogenic concern are detected and measured in edible tissues at levels as low as the best available technology will permit. Hypotheses about the sponsored compound's projected metabolic pathways may be used as a guide to experimentation, but they are not a substitute for actual experimentation.

(2) The dosing regimen shall be the maximum proposed use level and proposed duration of exposure to the sponsored compound. For a compound that is proposed for continuous or repeated use in target animals, administration for the metabolic study need continue only until tissue saturation has been demonstrated. If tissue saturation cannot be attained, residue equilibration or showing a stable metabolite profile will be adequate.

(3) The metabolic study shall be designed to yield the following information:

(i) The concentrations and total number of residues detected in edible tissues of target animals immediately following cessation of exposure.

(ii) The concentrations and total number of residues detected in edible tissues of target animals at a sufficient number of different time intervals, following the initial measurement, to determine the depletion trend of individual residues.

(iii) The physicochemical properties of the detected residues to identify compounds of potential carcinogenic concern.

(4) The results of the metabolic study shall be submitted in the form of a detailed report conforming to the standards required of scientific manuscripts submitted for publication in the journals of professional scientific societies, such as the American Chemical Society and the American Society of Biological Chemists. In addition, all raw data shall accompany and be referenced in the report.

(c) If the Commissioner determines that a sponsored compound has potential to contaminate food with residues whose consumption presents a human risk of cancer, the petitioner shall determine the carcinogenic potency of the sponsored compound and those residues that may be of public health concern due to chemical structure or persistence and concentration in edible tissues.

(d) Ordinarily, chronic testing of the sponsored compound and selected residues in experimental animals will be the preferred means of assessing carcinogenic potency.

(e) Residues in edible tissues of target animals that are intermediate metabolites in metabolic pathways that are reasonably expected to be similar in humans and the selected test animal species/strain need not be subjected to independent chronic toxicity testing. Testing the leading substrate in each metabolic pathway is sufficient. In the absence of information that the leading substrate is non-carcinogenic, tractable residues that are produced in the target animals but that are not produced in the test animal species/strain shall be subjected to independent chronic toxicity testing.

(f) Section 500.85 describes an alternative means of assessing the carcinogenic potency of residues whose isolation or synthesis in sufficient quantities for chronic testing proves to be beyond the practical limits of current chemical technology (intractable residues) by establishing additional criteria for selecting test animal species/strains used to conduct chronic toxicity testing of the sponsored compound.

§ 500.85 Criteria for test animal selection: Comparative metabolic studies to aid in assessing the carcinogenicity

(a) The primary criterion for selecting species or strains of test animals for chronic testing of both the sponsored compound and any metabolites selected in accordance with § 500.84 shall be the suitability of the species or strain as a model for man.

(b) If one or more intractable residues are also selected for chronic testing based upon the metabolic study in target animals, a secondary criterion shall be employed for selecting species or strains of animals for testing the sponsored compound. Metabolic studies of the sponsored compound in test animal species or strains determined to be suitable for chronic testing by the primary criterion shall be conducted to determine whether the intractable residues present in the tissues of target animals are also produced in the test animals. Chronic testing of the sponsored compound in a species or strain of test animals in which the complement of residues produced is similar to the complement of residues produced in the tissues of the target animals is considered an appropriate method of assessing the carcinogenic potency of the intractable residues.

§ 500.87 Chronic testing.

(a) Chronic toxicity tests shall be conducted to assess the carcinogenic potential of the residues of the sponsored compound.

(1) The sponsored compound and any residues selected for chronic toxicity testing shall be subjected to oral, lifetime, dose-response studies in the test animal species or strains selected

in accordance with § 500.85. Each of these studies shall be designed to determine whether the test compound is carcinogenic. Protocols for these studies should be submitted to the Food and Drug Administration for review before commencing testing.

(2) On the basis of the results of these chronic toxicity studies and other available information, the Commissioner will determine whether any of the compounds tested is carcinogenic. If this evidence is equivocal, the compound will be regulated as a carcinogen until further testing resolves the remaining questions regarding carcinogenicity.

(b) When the Commissioner determines that a sponsored compound has the potential to increase the normal levels (pools) of carcinogenic and potentially carcinogenic substances endogenous to the target animals, the petitioner shall meet the requirements of § 500.89(c), (d), and (e) or (f).

(c) For each tested compound regulated as a carcinogen, the appropriate data from the chronic dose-response studies shall be analyzed according to procedures described by Gross, et al. and Hoel, et al. subject to the modifications and restrictions set forth in paragraph (c)(1) through (8) of this section. The purpose of this analysis is to interpret the "no residue" requirement of the act as it applies to the total residue of carcinogenic concern of the sponsored compound and thereby to determine the lowest level of reliable measurement required for a regulatory assay to be approved for the monitoring of the total residue.

(1) The administered dose of each test compound shall be expressed as a fraction of the total diet fed the test animal species/strains, e.g., parts per million, parts per billion.

(2) The permissible level, determined by the linear extrapolation model for each test compound in accordance with this section, shall be expressed as a fraction of the total diet fed the test animal species/strains. It shall be calculated using the 99 percent confidence limit of the observations for a maximum lifetime risk that is essentially zero but never expected to exceed 1 in 1 million.

(3) Data obtained from more than one dose level fed to groups of experimental animals of the same strain shall be combined as described by Gross, et al. and Hoel, et al. and are subject to the restrictions specified by these authors.

(4) Pooling data from various chronic tests using different animal sexes, species, or strains is permitted if it can be demonstrated that the protocols are of compatible design. If statistically significant biological differences in tumorigenic responses are observed between sexes or among species or strains of experimental animals, only subsets of data representing statistically and biologically compatible

bioassays may be combined for analysis.

(5) All tumors, benign and/or malignant, shall be considered in the analysis.

(6) The number of animals at risk may be adjusted for competing risks unrelated to compound-induced carcinogenesis only when the data clearly support such an adjustment.

(7) When only the sponsored compound is subjected to chronic testing, the calculated "acceptable" level is to be designated as S_m . When more than one compound is subjected to chronic testing, the lowest of all calculated acceptable levels is to be designated S_m . S_m shall be expressed as the fraction of the diet fed the test animals, e.g., parts per million, parts per billion.

(8) The no-residue requirement of the act is considered satisfied when conditions and use of the compound, including any required withdrawal period, can be prescribed to assure that the sum of the levels of all potential residues of carcinogenic concern will not exceed S_m in the total diet of man, and a regulatory assay is available that is capable of reliably measuring such residues at and above that level. All residues of the sponsored compound are regulated as carcinogenic except those that have been shown to be noncarcinogenic.

(d) The S_m value represents the sum of all residues of carcinogenic concern that shall not be exceeded in the total diet of man. For individual edible tissues, the value that shall not be exceeded is to be designated S_m and calculated according to the following formula:

$$S_m = S_a / T$$

NOTE.—T is the fraction of the total daily diet of man represented by an individual edible tissue.

(1) The principal S_m calculations (defining T as noted in the formula above

in paragraph (c) of this section) are as follows:

Edible tissue	T	S_m
Muscle.....	1/2	3 S_m
Milk.....	1	S_m
Eggs.....	1/2	3 S_m

(2) Calculation of S_m for tissues consumed less frequently than muscle may take into consideration the frequency of consumption of those tissues if it can be clearly shown that S_m will not be exceeded in the total human diet.

§ 500.89 Metabolic study to identify the marker residue and target tissue.

(a) The petitioner shall conduct a study of the metabolic fate of the sponsored compound in target animals adequate to provide the data necessary for selecting a marker residue in target tissue.

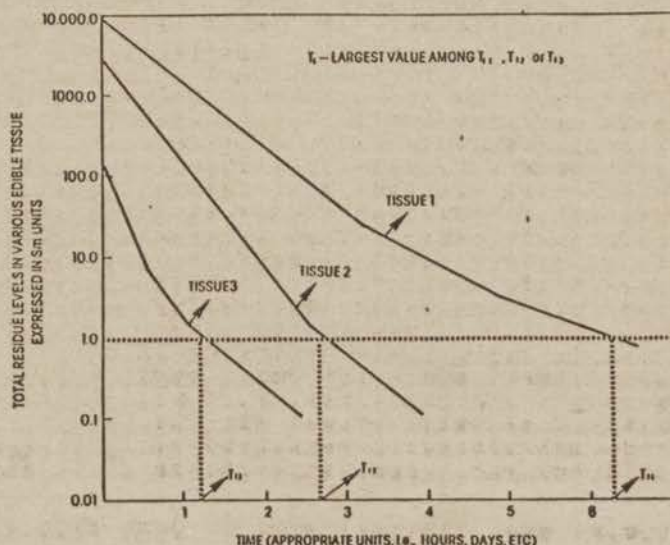
(1) The target tissue is that tissue in which measurement of the total residue burden of carcinogenic concern is a reliable measure of the total residue burden of carcinogenic concern in all edible tissues.

(2) The marker residue for the sponsored compound is that residue (the sponsored compound, any metabolite, or more than one of these) whose level in the target tissue is a reliable measure of the total burden of all residues of carcinogenic concern in all edible tissues.

(b) The metabolic study to establish the marker residue and target tissue shall comply with the requirements set forth in § 500.84(b) (2) and (4), with the following additional specifications:

(1) For each edible tissue, the depletion profile of the total residue of carcinogenic concern shall be constructed and shall include measurements of levels at least as low as the S_m appropriate to the tissue under study, as set forth in Plate I as follows:

PLATE I. RESIDUE DEPLETION CURVES TO BE USED IN THE DETERMINATION OF MARKER RESIDUE AND TARGET TISSUE.

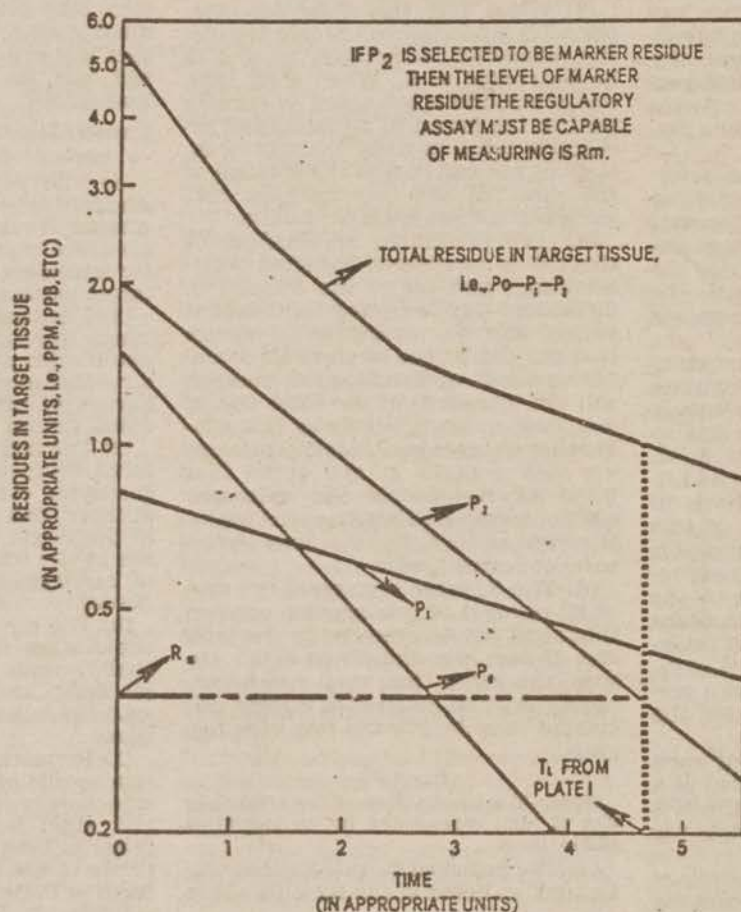


PROPOSED RULES

(2) Depletion profiles for one or more potential marker residues shall be constructed as set forth in Plate II as follows, and shall include measurements of levels corresponding to the

time when the total residue level has reached S_m in the edible tissue requiring the longest time to deplete to S_m (T_i of Plate I in paragraph (b)(1) of this section).

PLATE II. SELECTION OF MARKER RESIDUE AND ITS LEVEL R_m THAT MUST BE MEASURED BY THE REGULATORY ASSAY.



(3) If these specifications have been met by the metabolic study required by §500.84(b), a second metabolic study need not be performed to satisfy the section.

(4) From these data, the Commissioner will select a marker residue and target tissue and will also designate the required level of marker residue, R_m (set forth in Plate II in paragraph (b)(2) of this section), that regulatory assays shall be capable of measuring in the target tissue. The selection of R_m will be such that the absence of the marker residue in the target tissue above R_m can be taken as confirmation that the total residue burden of carcinogenic concern does not exceed S_m in each of the various edible tissues and therefore that the total burden of carcinogenic concern in the human diet does not exceed S_o . When a compound is to be used in milk- or egg-producing animals, milk or eggs will be the target tissue in addition to one tissue selected to represent the depletion of residues in the edible carcass.

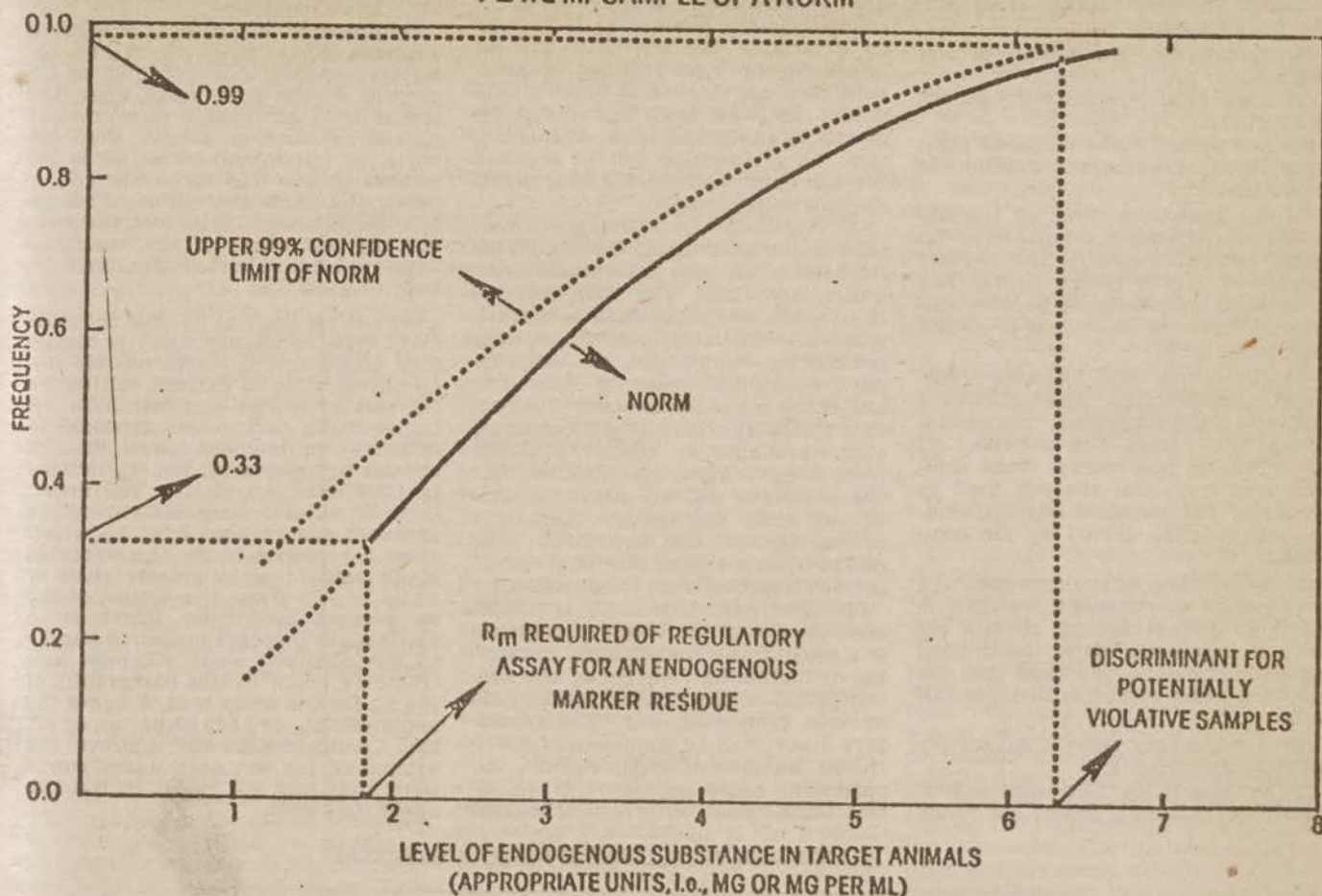
(c) When the Commissioner determines on the basis of available scientific information that a sponsored compound has the potential to increase the normal levels (pools) of potentially carcinogenic substances endogenous to target animals, the petitioner shall provide the following additional data:

(1) An experimental determination of the background levels (norm) of each of the potentially carcinogenic endogenous substances of concern in untreated target animals that are increased by administration of the sponsored compound.

(i) The norm shall be specific for the untreated target animals.

(ii) Each norm shall be submitted in the form of a graph of the cumulative frequency distribution versus the observed naturally occurring levels, including the upper 99 percent confidence limit set forth in Plate III as follows:

PLATE III. SAMPLE OF A NORM



(iii) An assay will be acceptable for the determination of a norm only if it yields values for the endogenous compound of interest greater than zero in at least two-thirds of the untreated target animals.

(2) Studies to measure the effect of the sponsored compound on the norm and the postexposure decay of any increase in the norm caused by administration of the sponsored compound. All data from these studies submitted in accordance with the requirements of § 500.84(b)(4).

(d) For a potentially carcinogenic endogenous compound whose norm is increased by the administration of a sponsored compound, the no-residue requirement of the act is considered satisfied when the norm is restored.

(1) The norm is considered restored when, with 99 percent confidence, the cumulative frequency distributions of the observed levels of the endogenous compound in the untreated target animals and in the treated target animals do not differ by more than 0.1 at any specific point.

(2) The market residue is the affected endogenous substance.

(3) When the norm of more than one potentially carcinogenic endog-

enous compound is increased by administration of the sponsored compound, the market residue for all endogenous compounds of concern is that endogenous compound whose norm requires the longest time for restoration.

(e) For an endogenous compound selected to be a marker residue, the required level of measurement, R_m , for the regulatory assay is the level of that endogenous compound corresponding to the 33d percentile of the norm, set forth in Plate III in paragraph (c)(1)(ii) of this section.

(f) The Commissioner will permit a shift in the norm of a potentially carcinogenic endogenous compound if there are available toxicology data of the type specified by §§ 500.84, 500.85, 500.87, and 500.89 that permit estimation of a permissible level corresponding to a lifetime cancer risk increment no greater than 1 in 1 million. If the endogenous compound is also selected to be the marker residue, the required level of measurement, R_m , for the regulatory assay is the level of that endogenous compound corresponding to the 33d percentile of the norm set forth in Plate III in paragraph (c)(1)(ii) of this section.

§ 500.90 Evaluation and approval of a regulatory assay.

(a) Before an application is considered for approval, the petitioner shall submit for evaluation and validation a regulatory assay developed to monitor compliance with the no-residue requirement of the act. The regulatory assay shall reliably measure the marker residue in the target tissue at levels at least equal to and above R_m , as defined in § 500.89(b), (e), and (f). The criteria and procedures in paragraphs (b) through (g) of this section apply to the evaluation and approval of assays.

(b) The regulatory assay will be evaluated and validated using data collected from three types of samples:

(1) Samples containing various known concentrations of marker residue added to the target tissue, i.e., "spiked" tissue samples.

(2) Samples containing various levels of the marker residue obtained from target tissue at appropriate time intervals after the sponsored compound is administered in accordance with the proposed labeling, i.e., "dosed" tissue samples.

(3) Samples obtained from untreated target animals, i.e., "control" tissue samples.

(c) The petition for approval of the proposed regulatory assay shall contain the following:

(1) A complete description of the assay.

(2) A list of all necessary equipment and reagents.

(3) A standard curve prepared from samples of the marker residue of known purity.

(4) An analytical curve of the observed assay response compared to the tissue concentrations of the marker residue in spiked target tissue. The curve shall include the 99 percent confidence limits for individual predicted assay responses.

(5) All relevant data, including worksheets, calculations, any statistical analyses, spectrograms, chromatograms, etc., from the analyses of spiked, dosed, and control tissue samples, and from the analysis used in preparing the standard curve including data on runs started but not completed.

(6) A discussion of the data collected in the assay development process pertinent to the evaluation criteria set forth in paragraph (d) of this section explaining how the data show that the proposed assay conforms to those criteria.

(d) A regulatory assay shall satisfy the following criteria:

(1) *Dependability.* The assay is considered dependable if it does not result

in an unreasonable number of failures due to unknown, uncontrollable, or random factors. Evaluation of the data to determine dependability will be based on the total number of assay runs that are started to provide data points for the analytical curve required by paragraph (c)(4) of this section. An explanation will be required for any assay run started that yields no final determination.

(2) *Practicability.* The assay is considered practicable only if it is suitable for routine use in a government regulatory laboratory. The time required to complete the assay shall be consistent with regulatory objectives, e.g., monitoring, compliance, etc. All supplies, equipment, reagents, standards, and other materials necessary to conduct the assay shall either be commercially available or readily available from the petitioner upon request. The Commissioner will withdraw approval of any assay and initiate regulatory action against the sponsored compound if such a condition of the compound's approval is no longer satisfied.

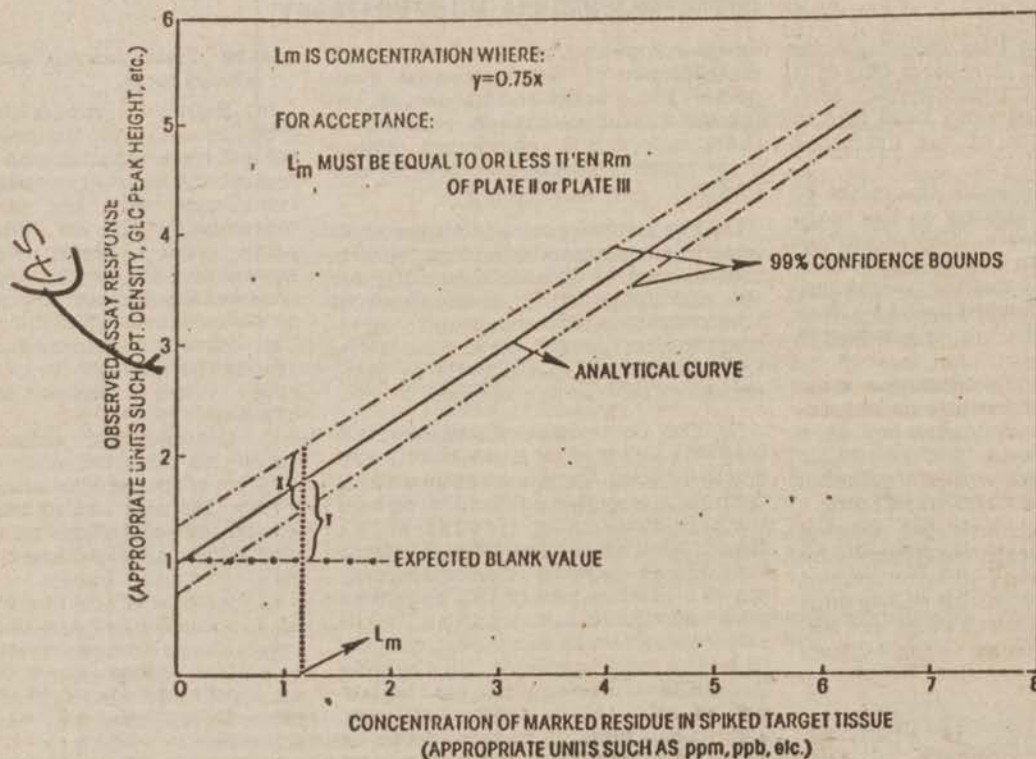
(3) *Specificity.* The assay is considered specific if the observed response is a smooth and continuously decreasing or increasing function of the concentration of the marker residue and of that compound only. The regulatory assay shall be composed of a sufficient number of independent measurements based on different biological, biochemical, or physicochemical

principles to ensure that the identity of the marker residue is confirmed.

(4) *Accuracy.* The assay is considered accurate if the averages of the observed responses fall within 80 to 110 percent of the true value when the lowest level of reliable measurement (L_m) is equal to or greater than 100 parts per billion and within 60 to 110 percent of the true value when L_m is below 100 parts per billion. This requirement need not be met throughout the full range of the analytical curve; it shall be met in the range between L_m and $3L_m$.

(5) *Lowest limit of reliable measurement.* The regulatory assay is considered approvable if it can reliably discriminate with 99 percent confidence the marker residue response from the target tissue background response at or below the required lowest limit of reliable measurement, the R_m , defined in § 500.89(b), (e), or (f). The lowest limit of reliable measurement of the proposed assay is that level, L_m , which gives a response above the expected blank value that is greater than or equal to 0.75 times the spread of the 99 percent confidence limits on a single assay response measured parallel to the observed assay response axis (Plate IV below in this paragraph). If the L_m for the assay is at or below the applicable R_m of § 500.89(b), (e), or (f), the Commissioner will approve the compound for use only under conditions that will not result in residues above that level.

PLATE IV. ANALYTICAL CURVE OF A REGULATORY ASSAY



(e) The Commissioner will review and evaluate the data submitted in accordance with paragraphs (a), (b), and (c) of this section. If the assay satisfies the evaluation criteria of paragraph (d) of this section, it will then be subjected to the interlaboratory validation study described in paragraph (f) of this section.

(f) Two Food and Drug Administration laboratories and one U.S. Department of Agriculture laboratory will independently run a number of assays to ascertain whether the regulatory assay conforms to the criteria set forth in paragraph (d) of this section.

(1) The petitioner shall supply the validating laboratories with the number and amount of dosed and control tissue samples, requested by the Commissioner.

(2) The petitioner shall supply reagents, standards, supplies, and equipment to the validating laboratories, as requested by the Commissioner.

(g) The Commissioner will evaluate the data gathered from the study run by the three validating laboratories described in paragraph (f) of this section. The assay will be approved if it meets the criteria set forth in paragraph (d) of this section in each laboratory.

§ 500.92 Withdrawal periods.

(a) The withdrawal period is the time after cessation of administration of the sponsored compound necessary for the marker residue to deplete to the lowest level of reliable measurement (L_m) in the target tissue. This time is the interval required for the statistical tolerance limit for the 99th percentile of the marker residue concentration for individual animals to deplete to L_m . The time will be extended if necessary to be consistent with conditions of livestock management so that directions for use of the compound with respect to the withdrawal period will be reasonably certain to be followed in practice.

(b) The sponsor shall submit studies of the marker residue's depletion from the target tissue of animals dosed according to the maximum level of use proposed in the petition and maintained under field conditions. The validated regulatory assay shall be used to collect these data.

(1) The petitioner shall submit a plot of the concentration of marker residues in target tissue as a function of time (depletion curve) including the

statistical tolerance limits for the 99th percentile of the expected marker residue concentrations for individual animals.

(2) All relevant data, including worksheets, calculations, and statistical analyses, shall be submitted along with a referenced discussion of the results.

(3) Use of the sponsored compound will be approved only if the available evidence demonstrates that the proposed conditions of use, including any withdrawal period, are reasonably certain to be followed in practice.

(c) When the marker residue is an endogenous compound, the withdrawal period will be the time required after cessation of administration of the sponsored compound for the norm to be restored, as described in § 500.89(d)(1). The time will be extended if necessary, but not reduced, to be compatible with conditions of livestock management so that the directions for use of the compound with respect to the withdrawal period will be reasonably certain to be followed in practice. The validated regulatory assay shall be used to collect data on the rate of restoration of the norm.

(1) The petitioner shall submit a series of curves that demonstrate the time required for restoration of the norm.

(2) All relevant data including worksheets, calculations, and statistical analyses shall be submitted along with a referenced discussion of the results.

(3) Approval of the petition for the sponsored compound will be granted only if the available evidence demonstrates that the proposed labeling is reasonably certain to be followed in practice.

§ 500.94 Publication of the approved regulatory assay.

The lowest level of reliable measurement (L_m), the complete regulatory assay for measuring the marker residue in the target tissue, and the analytical curve will be published in the FEDERAL REGISTER, in accordance with the provisions of sections 409(c)(3)(A), 512(d)(1)(H) and (I), and 706(b)(5)(B) of the act. For an endogenous marker residue, the norm will also be published.

§ 500.95 Compliance.

Compliance with the act will be determined as follows:

(a) When a target tissue is found to contain the marker residue at or above

the lowest level of reliable measurement (L_m), the Commissioner will conclude (1) that the carcass from which the target tissue was taken is unsafe for human consumption; and (2) that the sponsored compound may have been used in violation of the act.

(b) When animals are found to contain an endogenous marker residue at or above the 99th percentile of the norm (Plate III under § 500.89(c)(1)(ii)), they will be designated as potentially violative. Before regulatory action will be initiated, and investigation will be undertaken. This investigation is to determine whether the potentially violative sample came from target animals administered the sponsored compound whose median level of the endogenous marker residue is greater than the median of the norm.

§ 500.96 Waiver of requirements.

In response to a petition or on the Commissioner's own initiative, the Commissioner may waive, in whole or in part, any of the requirements of this subpart for the scientific evaluation of sponsored compounds that have the potential to contaminate food with residues which, when consumed, could engender a human risk of cancer. A petition for this waiver may be filed by any person who would be adversely affected by the application of the requirements to a particular compound. The petition shall explain and document why some or all of the requirements are not reasonably applicable to the compound, and describe the alternative procedures that have been, or could be, followed to assure that use of the compound will not contaminate human food with residues whose consumption could engender a human risk of cancer and that an assay exists that satisfies the requirements of § 500.90(d)(1) through (5) and that is capable of measuring any residues that might occur when the compound was improperly used. Interagency validation of the assay will always be required. The petition shall set forth clearly the reasons why the alternative procedures will provide the basis for concluding that approval of the compound satisfies the requirements of the anticancer provisions of the act. If the Commissioner determines that waiver of any of the requirements of this subpart is appropriate, the Commissioner will state the

basis for the determination in the regulation approving marketing of the sponsored compound.

§ 500.98 Implementation.

(a) This subpart applies to all new animal drug applications, feed additive petitions, and relevant color additive petitions (i.e., applications and petitions concerning any compound intended for use in food-producing animals) submitted to the Food and Drug Administration, including relevant supplemental applications and amendments to petitions, and to all these applications or petitions on file with the agency. If the Commissioner determines that consumer protection can be adequately ensured by imposing the requirements under paragraph (b) of this section, the Commissioner will do so.

(b) This subpart also applies to the following compounds already approved:

(1) Those compounds that the Commissioner determines, on the basis of available information, have been shown to induce cancer when ingested by man or animals.

(2) Those compounds that the Commissioner determines may induce cancer when ingested by man or animals, i.e., suspect carcinogens.

(3) Any compound for which the Commissioner concludes sufficient information has not been provided to determine whether residues of the sponsored compound present a risk of cancer to man.

(c) Any compound already approved, to which the Commissioner determines the anticancer provisions of the act apply, or for which additional data are required for such a determination, will be the subject of a notice published in the *FEDERAL REGISTER* or a letter issued under section 512(e) of the act establishing the time within which the requirements of this subpart shall be satisfied.

(1) Notices already published in the *FEDERAL REGISTER* and letters already sent by the Food and Drug Administration requiring additional studies or submission of an improved regulatory assay will remain in effect, and this subpart will be used in determining compliance with the requirements of the act identified in those notices and letters.

(2) The Commissioner will proceed to withdraw approval of any compound on the basis of data or information indicating a health hazard or in response to any failure to undertake studies necessary to comply with this subpart.

PART 514—NEW ANIMAL DRUG APPLICATIONS

3. In Part 514:

a. By amending § 514.1, by revising paragraph (b)(7) to read as follows:

§ 514.1 Applications.

(b) ***

(7) *Assays for residues.* A description of practicable methods for determining the quantity, if any, of the new animal drug in or on food, and any substance formed in or on food because of its use, and the proposed tolerance or withdrawal period or other use restrictions for this drug if any tolerance or withdrawal period or other use restrictions are required to ensure that the proposed use of this drug will be safe.

(i) The required information may include: Complete experimental protocols for determining drug residue levels in the edible products, and the time required for residues to be eliminated from the edible products following the drug's use; residue studies conducted under appropriate (i.e., consistent with the proposed usage) conditions of dosage, time, and route of administration to show levels, if any, of the drug and/or its metabolites in test animals during and upon ceasing treatment and at intervals thereafter to establish a depletion curve; if the drug is to be used in combination with other drugs, possible effects of interaction demonstrated by the appropriate disappearance curve or depletion patterns after drug withdrawal under appropriate (i.e., consistent with the proposed usage) conditions of dosage, time, and route of administration; if the drug is given in the feed or water, appropriate consumption records of the medicated feed or water and appropriate performance data in the treated animal; if the drug is to be used in more than one species, drug residue studies or appropriate metabolic studies conducted for each food-producing species. Appropriate use of labeled compounds (e.g., radioactive tracers) may be used to establish metabolism and depletion curves. Drug residue levels ordinarily should be determined in muscle, liver, kidney, fat, and where applicable, in skin, milk, and eggs (yolk and white). As a part of the metabolic studies, levels of the drug or metabolite should be determined in blood when feasible. Samples may be combined if necessary. When residues are suspected or known to be present in litter from treated animals, it may be necessary to include data on those residues' becoming components of other agricultural commodities because of the use of litter from treated animals.

(ii) If the new animal drug has the potential to contaminate human food with residues (parent compound, metabolites, conversion products, or

other substances found in or on food because of the drug's use) whose consumption could endanger a human risk of carcinogenicity, the applicant and the new animal drug are subject to the requirements of Subpart E of Part 500 of this chapter.

b. By amending § 514.111, by adding a new paragraph (a)(10) to read as follows:

§ 514.111 Refusal to approve an application.

(a) ***

(10) The drug fails to satisfy the requirements of Subpart E of Part 500 of this chapter.

PART 571—FOOD ADDITIVE PETITIONS

4. In Part 571, by adding new § 571.115, to read as follows:

§ 571.115 Application of the anticancer clause of section 409.

Food additives intended for use as an ingredient in food for animals that are raised for food production must satisfy the requirements of Subpart E of Part 500 of this chapter.

Interested persons may, on or before May 21, 1979, submit to the hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: February 26, 1979.

SHERWIN GARDNER,
Acting Commissioner of
Food and Drugs.

NOTE.—Incorporations by reference provisions approved by the Director of the Office of the Federal Register on December 21, 1978 and on file in the library of that office.

[FR Doc. 79-8215 Filed 3-19-79; 8:45 am]

Registered
Federal
Property

TUESDAY, MARCH 20, 1979
PART IV



**DEPARTMENT OF
LABOR**

**Office of Federal Contract
Compliance Programs**



**CONSTRUCTION
INDUSTRY IN CERTAIN
PARTS OF THE STATE OF
PENNSYLVANIA**

**Goals and Timetables for Minority
Participation**

[4510-27-M]

DEPARTMENT OF LABOR

Office of Federal Contract Compliance
ProgramsGoals and Timetables for Minority Participation
CONSTRUCTION INDUSTRY IN CERTAIN PARTS
OF THE STATE OF PENNSYLVANIA

This notice amends Appendix B of the notice issued on April 7, 1978, (43 FR 14899) and corrected on May 5, 1978, (43 FR 19473) which established goals and timetables for minorities in the construction industry. This notice is issued pursuant to 41 CFR 60-4.6 and establishes goals and timetables for minorities under Executive Order 11246, as amended (30 FR 12319, 32 FR 14303 and 43 FR 46501), in the construction industry. This notice applies only to the operating engineers trade and is limited to specified counties in the State of Pennsylvania which are set forth in Appendix B-1 attached.

BACKGROUND

Department of Labor regulations (41 CFR 60-4.6) require the Director of the Office of Federal Contract Compliance Programs (OFCCP) to issue goals and timetables for minority and female utilization for Federal and federally assisted construction contractors and subcontractors. The regulations require that the goals be based on workforce, demographic or other relevant data.

The regulations also require that goals and timetables be published in the FEDERAL REGISTER as a notice of general information to the public but not for public comment. However, when 41 CFR Part 60-4 was promulgated on April 7, 1978, (43 FR 14888) the preamble to the regulations stated that (*id.* at 14892):

It is anticipated that within the very near future OFCCP will propose standards and goals for minority utilization pursuant to 41 CFR 60-4.6. Until those goals are published in final form the goals and timetables applicable under existing OFCCP requirements will continue to be effective.

One of the existing requirements which established goals at that time was the Philadelphia Plan. That Plan, however, required goals only for a limited number of the skilled trades. One trade not subject to the Philadelphia Plan was the operating engineers. Indeed, on July 17, 1968, Local Union 542, and its affiliate, the International Union of Operating Engineers, AFL-CIO, and the Contractors Association of Eastern Pennsylvania, the Pennsylvania Excavating Contractors Association, and the United Contractors Association, entered into an agreement which formulated an affirmative

action program. That agreement provided:

The parties undertake this Affirmative Action Program in accordance with Executive Order 11246. It is their understanding that participation in the program by any contractor shall be accepted in lieu of that portion of a required affirmative action plan which would otherwise be directed to jobs manned by members of the Operating Engineers' union.

This program was approved by the Department of Labor as an alternative method to the Philadelphia Plan for complying with Executive Order 11246. Consequently, the operating engineers trade was never subject to the Philadelphia Plan.

In 1971 Local Union 542 and the contractor associations signatory to the affirmative action program described above, were named as defendants in a Title VII lawsuit filed in the Federal district court at Philadelphia (*Commonwealth of Pennsylvania v. Local Union 542*, USDC ED Pa., Civil Action No. 71-2698). On January 2, 1979, the court's opinion was released. The court found that Local 542 grossly overstated in the affirmative action program (and to Department of Labor officials) the number of minority workers having membership in the union and that the purpose of such overstatements was to avoid coverage under the Philadelphia Plan.

Specifically, the court found:

While it is conceivable that in one instance the union could have made a significant error in overestimating the number of minorities in the union, it is incredible that errors of this magnitude occurred consistently by any mere coincidence. I find, and the record permits no other plausible inference, that the repeated overestimation of the number of minority individuals in the union the failure to file complete semi-annual OFCC reports with the prerequisite data, and the other related activities of the union on this issue of the "Affirmative Action Program" were part of a deliberate scheme of Local 542 to deny to the federal government accurate information on the percentage of minority individuals in 542. This scheme was part of an effort to have federal funds inappropriately released while at the same time permitting 542 to keep the minority representation in the union at a far lesser level than it otherwise would have been if the Philadelphia Plan had been applied. Only a finding of discriminatory intent can explain this subterfuge. The Philadelphia Plan would have resulted in a higher number of minority group members in the union and in the related industry. I find further that the Philadelphia Plan would have been adopted by the defendants if the fraud, deception and scheme of Local 542 had not been pursued by the willful presentation of substantial overestimates of the number of minorities in the union. [Emphasis in original.]

Any argument that the contracting associations were not at least reckless participants in this scheme because the union alone had primary access to the membership data, I find to be devoid of merit

and patently incredulous. When these same contractors sought the release of the \$30 million dollars they showed no hesitation in signing the statement that they "made a detailed analysis of minority group workers * * *". At the same time of this certification, there was no real suggestion that any of the signatory contractor associations had any doubt about the accuracy of the data or had merely limited knowledge of it; Instead, they endorsed it. In this respect their posture is like that of an accounting firm which has certified that it has counted petty cash monies or has verified bank statement deposit records when, in actuality, it has done neither. In the instant situation, the record reveals a total absence of concern on their part regarding the accuracy of their representation to the federal government in seeking the immediate release of at least \$30,000,000 and doubtless the release of millions more to follow. The prospect of deriving such an immediate and substantial financial benefit from the federal coffers allowed them to become willing parties to the scheme by capriciously certifying "facts" in anticipation of the government's reliance on them: Having sought to enrich their members with substantial profits, it is now too late to cry innocence and cast the blame elsewhere. These were no innocent prognosticators who were misled by the union's scheme to give inaccurate information. Under these circumstances, I find that these signatory defendant associations are consequently estopped from repudiating their certification after their members have had the opportunity to compete for and after many have received the released funds.

Based on these findings it is appropriate to issue goals and timetables for the operating engineers trade, without further delay, in those geographical areas where Local 542's jurisdiction extends.

LOCAL 542'S JURISDICTION

Local 542's jurisdiction extends to 34 counties in Pennsylvania and to the State of Delaware. Goals for the trade are in place in Delaware, however, as the July 17, 1968, agreement and affirmative action program did not exempt the operating engineers trade from goals in Delaware. This notice therefore establishes goals only for those Pennsylvania counties within Local 542's jurisdiction. The goals and the counties within Local 542's jurisdiction are set forth in the attached Appendix B-1.

The goals have been established based on the minority workforce of the relevant Standard Metropolitan Statistical Areas (SMSA) or, where there was no SMSA, the workforce statistics of the relevant Economic Areas (EA). The goals are for minority utilization and are expressed in terms of hours of training and employment as a proportion of the total number of hours to be worked by operating engineers in the contractor's aggregate workforce, which includes all supervisory personnel on all projects (both Federal and non-Federal).

Now, therefore, based on the foregoing and 41 CFR 60-4.6, each contracting agency, each applicant and each contractor shall include the appropriate goal set forth in Appendix B-1 in all invitations for bids or other solicitations for federally involved construction contracts in excess of \$10,000 to be performed in the State of Pennsylvania. Appendix B-1 shall be effective with respect to transactions for which the invitations for bids or other solicitations or amendments thereto are sent on or after April 19, 1979.

Dated: March 13, 1979.

WELDON J. ROUGEAU,
Director, OFCCP.

APPENDIX B-1

Until further notice, the following goals for minority utilization in the operating engineers trade shall be included in Federal or federally assisted construction contracts and subcontracts in excess of \$10,000 to be performed in the respective covered areas in the State of Pennsylvania. The goals are applicable to the contractor's aggregate on-site construction workforce regardless of whether that workforce is performing work on a Federal, federally assisted or nonfederally related construction contract or subcontract. This Appendix B-1 shall be used jointly with Appendix B which was attached to the Notice published in the FEDERAL REGISTER on April 7, 1978, (43 FR 14899) and amended on May 5, 1978, (43 FR 19473).

REGION III

Wilkes-Barre, Pa., Area

Area covered—Wayne, Pike, Wyoming and Columbia, Counties, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Operating engineers.	0.4

Harrisburg, Pa., Area

Area covered—Dauphin, Perry and Cumberland

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Operating engineers.	6.2

Lancaster, Pa., Area

Area covered—Lancaster County, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Operating engineers.	2.0

Northeast, Pa., Area

Area covered—Locawana, Luzerne and Monroe, Counties, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Operating engineers.	0.6

York, Pa., Area

Area covered—Adams and York, Counties, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Operating engineers.	2.2

Susquehanna, County, Pa., Area

Area covered—Susquehanna, County, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Operating engineers.	1.1

Tioga and Bradford, Counties, Pa.

Area covered—Tioga and Bradford, Counties, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Operating engineers.	1.0

Philadelphia, Pa., Area

Area covered—Philadelphia, Bucks, Montgomery, Delaware, and Chester, Counties, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Operating engineers.	17.3

Reading, Pa., Area

Area covered—Berks, County, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Operating engineers.	2.5

Williamsport, Pa., Area

Area covered—Lycoming, County, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Operating engineers.	1.0

Allentown, Bethlehem, Easton, Pa., Area

Area covered—Carbon, Northampton, and Lehigh, Counties, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Operating engineers.	1.6

Sullivan County, Pa., Area

Area covered—Sullivan County, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Operating engineers.	0.9

Union, Northumberland and Montour, Pa., Area

Area covered—Union, Northumberland, Montour, Lebanon, Snyder and Juniata, Counties, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Operating engineers.	2.6

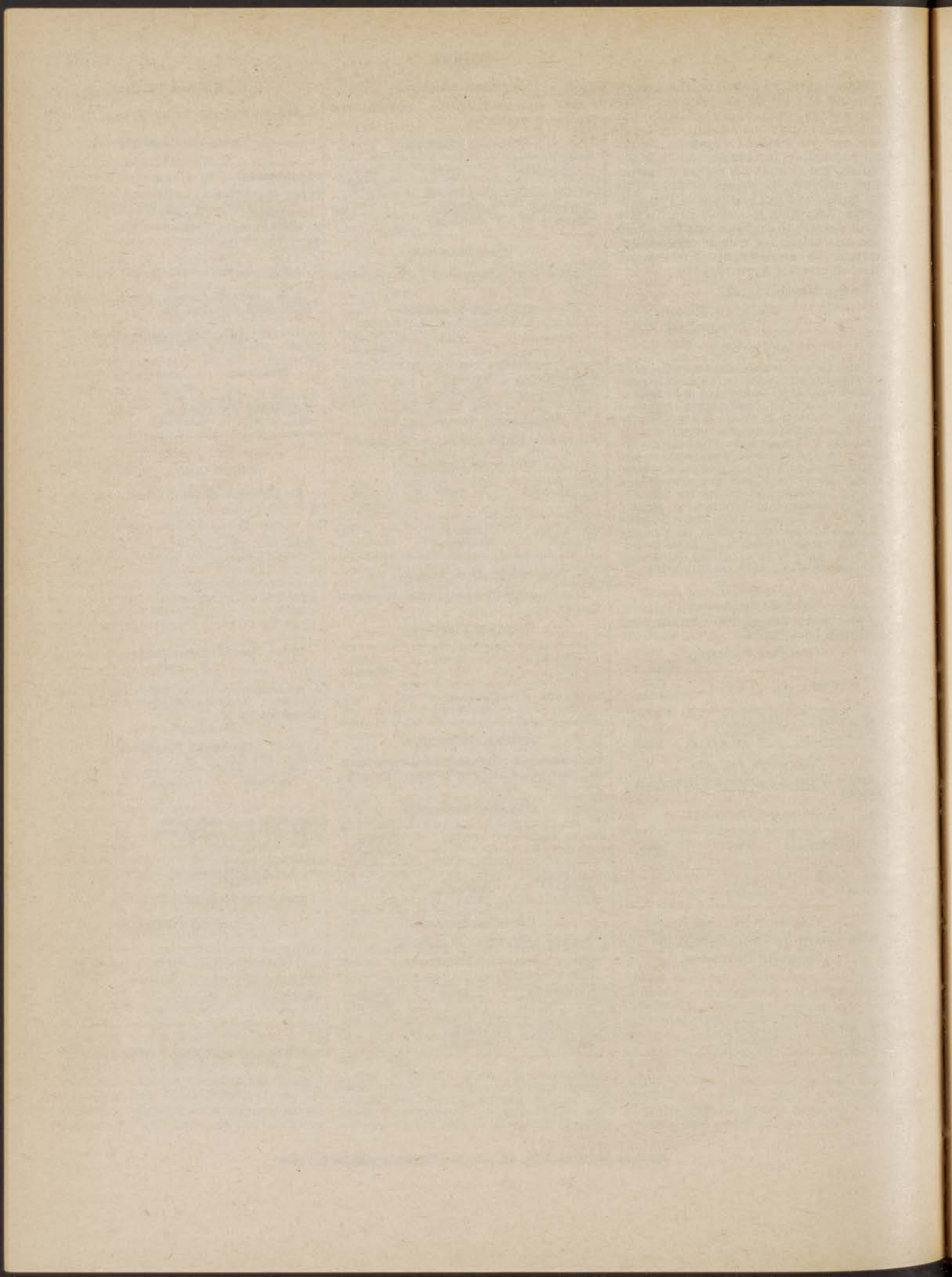
Schuylkill County, Pa., Area

Area covered—Schuylkill County, Pa.

GOALS AND TIMETABLES

Timetable	Trade	Goal (percent)
Until further notice.	Operating engineers.	14.1

FR Doc. 79-8221 Filed 3-19-79; 8:45 am]



Registered for deposit

TUESDAY, MARCH 20, 1979
PART V



**ENVIRONMENTAL
PROTECTION
AGENCY**



**PERFORMANCE
STANDARDS
FOR NEW
STATIONARY
SOURCES**

**Amendment to Petroleum
Refinery Claus Sulfur
Recovery Plants**

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 60]

[FRL 1042-1]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Amendment to Petroleum Refinery Claus Sulfur Recovery Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the definition of small "petroleum refinery" contained in the standard of performance promulgated for petroleum refinery Claus sulfur recovery plants (43 FR 10866, March 15, 1978). The promulgated standard exempts small Claus sulfur recovery plants associated with a small petroleum refinery. Included in the definition of a small refinery is the qualification that the petroleum refinery must be owned or controlled by a refiner (or company) whose total crude oil processing capacity is 137,500 barrels per stream day (BSD) or less. Two large oil companies (i.e., with more than 137,500 BSD processing capacity) filed a Petition for Review of the promulgated standard challenging the standard and the applicability of the exemption to only small companies. After considering the arguments presented in this petition and reconsidering the background information for the promulgated standard, EPA believes it is appropriate to apply the exemption to all small petroleum refineries. Consequently, the proposed amendment extends the exemption for small Claus sulfur recovery plants located in small petroleum refineries to all companies regardless of their total crude oil processing capacity.

This amendment will not result in any significant change in the environmental, energy, or economic impacts resulting from the promulgated standard.

DATE: Comments must be received on or before May 21, 1979.

ADDRESS: Comments should be submitted to the Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention: Mr. Jack R. Farmer.

Interested persons who desire an opportunity for the oral presentation of data, views, or arguments should also contact Mr. Farmer.

Docket: Docket No. OAQPS-79-10 containing all supporting information used by EPA in developing the pro-

posed rule, as well as comments received on this proposal will be available for public inspection and copying at the EPA Central Docket Section (A-130), Room 2903B, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Don R. Goodwin, Emission Standards and Engineering Division, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number 919-541-5271.

SUPPLEMENTARY INFORMATION:

PROPOSED AMENDMENT AND BACKGROUND

It is proposed to amend Subpart J—Standards of Performance for Petroleum Refineries to change the applicability of the standard for new, modified, or reconstructed petroleum refinery Claus sulfur recovery plants. The amendment will exempt from the standard all Claus sulfur recovery plants with a capacity of 20 long tons per day (LTD) or less associated with a petroleum refinery having a processing capacity of 50,000 BSD or less.

On October 4, 1976 (41 FR 43866), EPA proposed standards of performance limiting SO₂ emissions from new, modified, or reconstructed petroleum refinery Claus sulfur recovery plants. These standards applied to all petroleum refinery Claus sulfur recovery plants, regardless of the size of the sulfur recovery plant or the size of the refinery involved. During the comment period following proposal, several commenters presented information showing that the economic impact of the standards would be much more severe on a small petroleum refinery than on a large petroleum refinery. As a result, EPA reexamined this point and concluded that an exemption from the standard was appropriate for small sulfur recovery plants located in small petroleum refineries. In defining the "small petroleum refinery", EPA adopted the definition included in section 211(g) of the Clean Air Act as amended August 1977 which defines a small petroleum refinery as one of 50,000 BSD or less which is owned or controlled by a company with no more than 137,500 BSD of total crude oil processing capacity.

On May 12, 1978, a Petition for Review of the standard was filed in the U.S. Court of Appeals for the District of Columbia Circuit on behalf of Phillips Petroleum Company and Ashland Oil, Inc. Among other things, the Petitioners argued that the exemption from the standard for small sulfur recovery plants associated with small petroleum refineries should apply in all cases, regardless of the size (i.e., total refining capacity) of the company

owning or controlling the refinery. After a consideration of the points covered in the Petition for Review and the background information for the promulgated standard, EPA agrees with the Petitioners and is proposing this amendment to the standard. The Petitioners have agreed to dismiss their entire Petition for Review if the final regulation does not differ substantively from the proposal discussed herein.

RATIONALE

As concluded in the preamble to the promulgated regulation (43 FR 10866, March 15, 1978) EPA's analysis of the impact of the proposed standard on the profitability of a small petroleum refinery indicated this impact would have been more severe than the corresponding impact on a large petroleum refinery. The attempt of the Agency in allowing the exemption from the standard was to:

(1) Lessen the adverse economic impact of the standard on the small refinery compared to the large refinery; and

(2) Have minimum impact on efforts by States to encourage installation of sulfur plants at small refineries where none previously existed.

In considering the appropriateness of an exemption from standard for certain refineries, EPA first looked at the cost per unit of sulfur recovered (i.e., cost effectiveness) relative to the size of the refinery Claus sulfur recovery plant having to comply with the standard. This analysis revealed a significant deterioration in cost effectiveness for Claus sulfur recovery plant capacities of 20 LTD or less. As a result, EPA concluded that refinery Claus sulfur recovery plants with a capacity of 20 LTD or less should be exempted from the standard. Since the economic impact of the standard was also known to be dependent upon the size of the refinery in which the Claus sulfur recovery plant was located, EPA reviewed its analysis of the impact of the standard on different size refineries. On the basis of this analysis, EPA concluded that for refineries of 50,000 BSD or less the reduction in profitability required by the standard was unreasonable. Thus, initial drafts of the standards provided an exemption for Claus sulfur recovery plants with a capacity of 20 LTD or less associated with a petroleum refinery having a processing capacity of 50,000 BSD or less.

During internal EPA review of the standard prior to promulgation, a recommendation was made that "small petroleum refinery" be defined to be consistent with section 211(g) of the Clean Air Act. This provision defines a small refinery as one with a total crude oil processing capacity of 50,000

BSD or less owned or controlled by a company with a total crude oil processing capacity of 137,500 BSD. This suggestion was incorporated into the standard. Thus, the promulgated standard exempted and Claus sulfur recovery plant with a capacity of 20 LTD or less associated with a petroleum refinery having processing capacity of 50,000 BSD or less owned or controlled by a company with a total processing capacity of 137,500 BSD or less.

In light of the evolution of this standard, it is apparent that EPA did not in this case conduct the analysis required to support the requirement in the standard that a small refinery be owned or controlled by a company with a total crude oil processing capacity of 137,500 BSD. Thus, the proposed amendment will exempt from standards of performance all new, modified, or reconstructed Claus sulfur recovery plants with a capacity of 20 LTD or less associated with a petroleum refinery having a crude oil processing capacity of 50,000 BSD or less.

ENVIRONMENTAL, ECONOMIC AND ENERGY IMPACTS

This amendment will result in a negligible increase in SO₂ emissions compared to the promulgated regulation. Based on past trends in petroleum refinery and sulfur recovery plant construction, very few large companies are likely to build small petroleum refineries with small sulfur recovery plants. In addition, the few petroleum refinery Claus sulfur recovery plants involved would be regulated by State regulations at a control level only somewhat less than that of the promulgated standard.

For the same reasons, this amendment will result in a negligible decrease in costs and energy consumption compared to the promulgated standard.

MISCELLANEOUS

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rule-making. The principal purposes of the docket are: (1) To allow members of the public and industries involved to identify and participate in the rule-making process, and (2) to serve as the record for judicial review. The docket is required under section 307(d) of the Clean Air Act, as amended, and is available for public inspection and copying at the address above.

It should be noted that standards of performance for new sources under section 111 of the Clean Air Act reflect:

*** application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. [Section 111(a)(1).]

Although there may be emission control technology available that can reduce emissions below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act requires (or has the potential for requiring) the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources locating in nonattainment areas, i.e., those areas where statutorily-mandated health and welfare standards are being violated. In this respect, section 173 of the Act requires that a new or modified source constructed in an area which exceeds the NAAQS must reduce emissions to the level which reflects the "lowest achievable emission rate" (LAER), as defined in section 171(3), for such category of source. The statute defines LAER as that rate of emissions which reflects:

(A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event can the emission rate exceed any applicable new source performance standard [section 171(3)].

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (Part C). These provisions require that certain sources [referred to in section 169(1)] employ "best available control technology" [as defined in section 163(3)] for all pollutants regulated under the Act. Best available con-

trol technology (BACT) must be determined on a case-by-case basis, taking energy, environmental and economic impacts and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 111 (or 112) of the Act.

In all events, State Implementation Plans (SIP's) approved or promulgated under section 110 of the Act must provide for the attainment and maintenance of national ambient air quality standards (NAAQS) designed to protect public health and welfare. For this purpose, SIP's must in some cases require greater emission reductions than those required by standards of performance for new sources.

Finally, States are free under section 116 of the Act to establish even more stringent emission limits than those established under section 111 or those necessary to attain or maintain the NAAQS under section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than EPA's standards of performance under section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for revisions determined by the Administrator to be substantial. The Administrator has determined that the economic impact of the proposed amendment is not substantial and an economic impact assessment is not required.

Dated: March 9, 1979.

BARBARA BLUM,
Acting Administrator.

It is proposed to amend Part 60 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

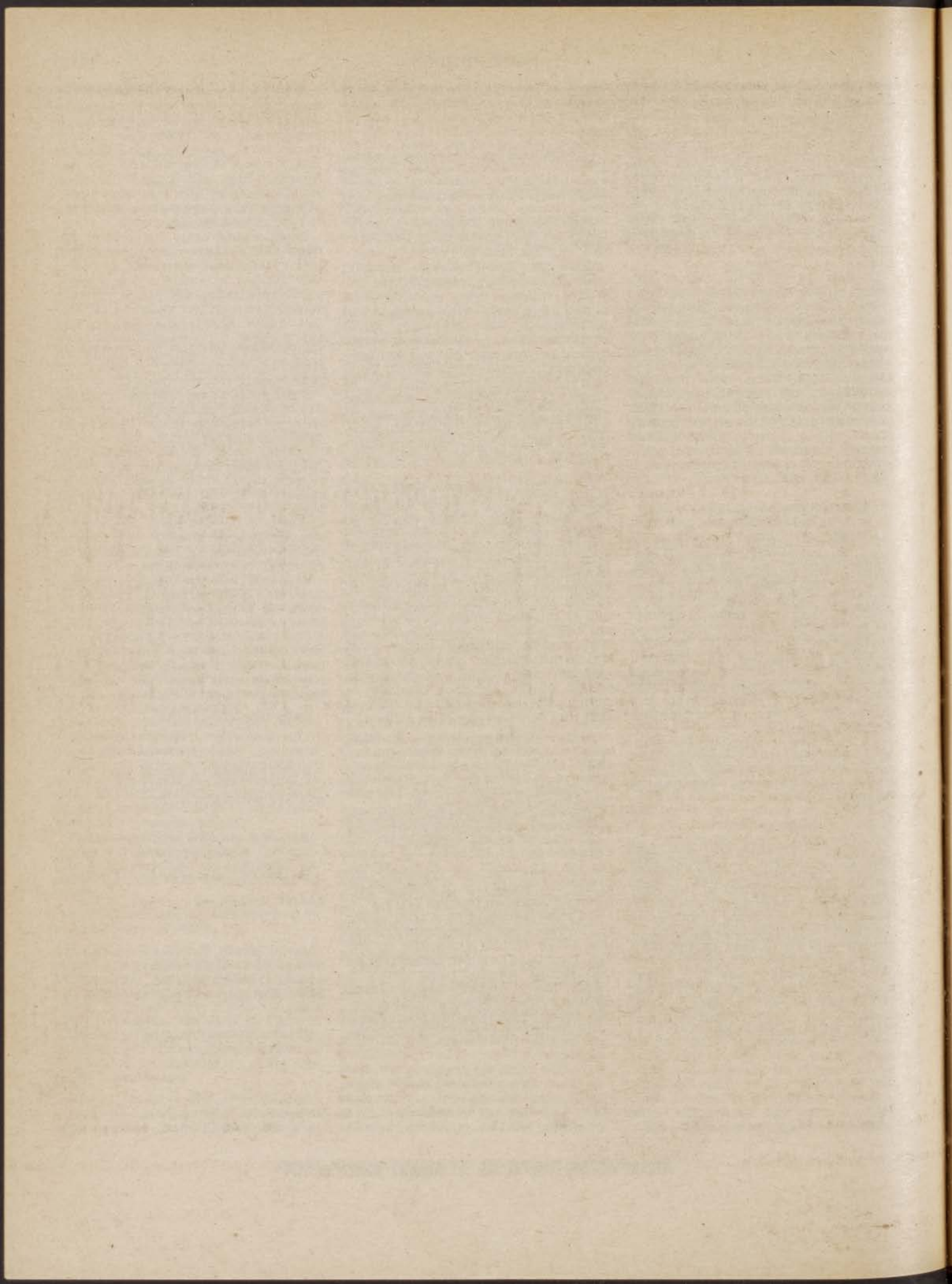
Subpart J—Standards of Performance for Petroleum Refineries

Section 60.101 is amended as follows:

§ 60.101 Definitions.

(m) "Small petroleum refinery" means a petroleum refinery which has a crude oil processing capacity of 50,000 barrels per stream day (BSD) or less.

[FR Doc. 79-8258 Filed 3-19-79; 8:45 am]



Register
Federal

TUESDAY, MARCH 20, 1979
PART VI



DEPARTMENT OF
HOUSING AND
URBAN
DEVELOPMENT



FEDERAL AND FEDERALLY
ASSISTED PROGRAMS
AND PROJECTS

Implementation of OMB Circular
A-95; Evaluation, Review, and
Coordination

[4210-01-M]

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-79-630]

PART 52—IMPLEMENTATION OF OMB CIRCULAR NO. A-95

Final Regulations; General Applicability

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This rule sets forth the final regulations implementing the requirements of OMB Circular No. A-95, Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects, as they apply to HUD's programs. These regulations are intended to provide for a more consistent implementation of the A-95 process for Departmental programs by establishing uniform processing procedures and clearly defining the roles and responsibilities of program staff in complying with the overall intent of OMB Circular No. A-95.

EFFECTIVE DATE: April 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Mary E. Youle, Office of Community Planning and Program Coordination, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7233, Washington, D.C. 20410 (202-472-3980).

SUPPLEMENTARY INFORMATION: On January 13, 1976, the Office of Management and Budget published in the FEDERAL REGISTER (41 FR 2052) a revision to OMB Circular No. A-95, Paragraph 7 of the main body of the Circular requires that certain Federal Departments and Agencies publish regulations which implement the requirements of the Circular as revised (41 FR 2052) and provide a basis for a higher degree of consistency in the application of the A-95 process to Departmental programs. The purpose of this issuance is to set forth the Departmental implementing instructions in conformance with the Circular. Emphasis has been placed on establishing uniform processing procedures for the applicable programs and clearly defining the roles and responsibilities of program staff in complying with the overall intent of the Circular.

Interim regulations which summarized and clarified procedures and re-

sponsibilities for meeting A-95 requirements pertaining to HUD programs were published for effect, with a 30-day comment period, on September 23, 1976 (41 FR 41874). Based on comments received, the interim regulations have been revised and are hereby set forth as final regulations.

The purpose of these regulations is to further the objectives of: (1) Title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1103); (2) Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1263, 82 Stat. 208); (3) Section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat. 853); (4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); (5) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.); (6) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701U); and (7) the Housing and Community Development Act of 1974 (42 U.S.C. 5301).

Subpart A defines the administrative responsibilities for carrying out Departmental responsibilities in the evaluation, review and coordination of Departmental programs pursuant to the OMB Circular. A special effort has been made to clarify the processing procedures and identify responsibilities at the Headquarters, Regional and Field Office levels.

Subpart B describes the evaluation and review procedures for all applicable HUD programs from which Federal assistance or insurance is being sought (listed in the appendix) and includes the limitations and procedural variations that apply. Special emphasis has been placed on the coordination and planning functions of the clearinghouse and HUD with respect to reviewing applications for assistance.

Subpart C establishes the procedures to assure that:

(a) All direct Federal development activities which significantly affect area and community development are in compliance with Part II, Attachment A of the Circular. [Reserved]

(b) All HUD programs which require a State plan as a condition of assistance, are in compliance with Part III, Attachment A of the Circular, and

(c) HUD encourages States to exercise their leadership in establishing a system of coordinated planning and development districts in accordance with Part IV, Attachment A of the Circular.

In developing these regulations particular attention has been given to the concerns of program personnel, HUD field personnel, applicants, and the A-95 clearinghouses. In an attempt to achieve better program coordination in the development and implementation of State, areawide and local Com-

prehensive Plans, emphasis has been placed on the following key areas of the Project Notification and Review System established in Circular No. A-95:

1. Early applicant contact and discussion with clearinghouses prior to submitting applications to HUD.

2. The timing requirements for clearinghouse consultation and review of the applicant's proposals.

3. The attachment of clearinghouse comments and recommendations to the application when submitted to HUD, unless concurrent review is allowed by program regulations.

4. Clarification of the procedures for HUD's notification to clearinghouses of action taken on the application.

5. Consultation with other Federal agencies when interagency conflicts or duplication in funding have been identified.

6. HUD use of clearinghouse comments in making decisions on applications for assistance.

7. HUD responsibilities for administration of the A-95 process at various organizational levels.

DISCUSSION OF MAJOR COMMENTS AND CHANGES

HUD received eighteen responses to the September 23, 1976, publication. All of these comments were seriously considered and as a result many changes have been incorporated in the final regulations. The major comments and changes are discussed below:

1. A comment concerning the definition of "HUD field office" has resulted in its definition being added to § 52.2(d).

2. Some revisions have been made to § 52.3(c)(3) in order to reflect the new delegation of responsibilities in the Department's organizational handbook. One comment questioned whether § 52.3(c)(3), which stated that the Regional Office A-95 liaison officer has the duty to train clearinghouses, was appropriate since OMB has delegated such matters to the Federal Regional Councils. Therefore, § 52.3(c)(3) has been clarified, as has § 52.101(a), to indicate that HUD's responsibility to train clearinghouses is limited to HUD's A-95 program procedures.

3. Several comments requested clarification of § 52.3(d)(1), concerning field office consultations with clearinghouses. As a result, changes have been made to clarify that the HUD field office A-95 liaison is responsible for contacting clearinghouses and periodically providing them with feedback regarding the usefulness of the clearinghouses' comments to HUD's decision making. Another comment resulted in the addition of § 52.3(d)(1)(iv), which states

that the A-95 liaison is responsible for periodically providing clearinghouses with information on changes in program funding levels, number of applicants, application time schedules and other changes which might affect clearinghouse workload or procedures.

4. An appendix listing all HUD programs covered by OMB Circular No. A-95 as of the date of this publication has been added to these regulations as the result of one request.

5. One comment requested that § 52.101(e)(1) provide instructions regarding the consideration of adverse clearinghouse comments and comments from environmental and civil rights agencies which are received after the review period has ended. Such instructions have not been added, since HUD's course of action would depend on the reason for late arrival of comments. If the applicant is at fault and did not provide the appropriate clearinghouses with adequate time for review, HUD will not take any action on the application until the clearinghouses are given adequate time to review and comment, and all comments are considered. However, where the applicant has provided the clearinghouses with the required time for review and comment and clearinghouses are late in submitting their comments, we cannot assure that such comments will be considered. Although late comments will be considered insofar as possible, processing and timing pressures may make this infeasible in some instances.

6. We have revised § 52.101(e)(1), as requested, to clarify that any comments by individuals, groups or agencies forwarded to HUD through the clearinghouses are to be considered along with clearinghouse comments.

7. Based on a comment, § 52.101(e)(2) has been revised to state that comments from substate agencies involved in the State coastal zone management program as well as those from the State coastal zone management agency will be considered by HUD in meeting its responsibilities under the Coastal Zone Management Act of 1972.

8. The provision in § 52.101(e)(3)(ii), whereby an application with unresolved negative comments citing inconsistency with plans or statutory non-compliance cannot be approved without concurrence by the Regional Administrator, resulted in field office comments that this provision could cause processing delays and might be particularly difficult where there are statutory limitations on processing time. Consequently, the revised regulations allow the Regional Administrator to waive the concurrence requirement on a program-by-program basis (a) when there is a determination, based on monitoring of field offices,

that the A-95 procedures are being followed or (b) when a statutory limitation on processing time makes the concurrence provision inoperable.

9. The interim regulations erroneously stated in § 52.101(f)(1) that HUD must provide clearinghouses with notification of action taken on a reviewed application "within seven calendar days". In accordance with OMB Circular No. A-95, Attachment A, Part I, 6(c), this has been corrected in the final regulations to require notification "within seven working days."

10. Several comments with regard to § 52.101(f)(3) stated that HUD should provide an explanation regarding approval of applications receiving negative comments to any organization or group submitting such comments, not just to clearinghouses. In accordance with OMB's interpretation of this requirement, described on page 20 of the OMB Handbook "A-95 What It Is—How It Works," these regulations will not require that program officials send explanations of action taken to agencies other than clearinghouses, although they may do so if they feel it is appropriate. However, a statement has been added to the regulations to indicate that upon request by the clearinghouse, HUD will provide the clearinghouse with an explanation, which can then be forwarded to the commenting agency.

11. Several comments suggested clarification or revisions of the description of application amendments requiring clearinghouse review in § 52.101(g). This section has not been changed since the thresholds at which amendments become significant enough to require HUD approval and, therefore, clearinghouse review will vary from program to program. Applicants should consult the program regulations, HUD Regional and field office program staff and the A-95 liaison or the appropriate clearinghouses to determine whether application amendments require A-95 review.

12. One comment requested clarification in the review requirements under OMB Circular No. A-95 and Section 213 of the Housing and Community Development Act of 1974, implemented by 24 CFR Part 891. In order to facilitate coordination of these two review requirements, the final regulations in § 52.102(c) now state that HUD submission of applications for A-95 review must occur "no later than 10 working days" after receipt, which will allow simultaneous initiation of the 30-day A-95 and 213 review periods. Clearinghouses are also encouraged to develop arrangements with units of general local government to coordinate submission of A-95 and 213 comments. Although these two somewhat duplicative review systems cannot be combined under current legislation,

the relationship between them should be simplified and clarified by these new provisions.

13. Conflicting comments were received regarding § 52.102 (b) and (c) which state that applications for HUD housing assistance or insurance may be sent to clearinghouses prior to submission to HUD or may be submitted directly to HUD, in which case HUD must send them to the clearinghouses for review. The regulations encourage applicants to obtain A-95 comments prior to submission of applications to HUD since early contact with clearinghouses can save considerable time and effort by eliminating major problems before the applications are completed. However, OMB Circular No. A-95 does not require that housing applications be submitted to clearinghouses prior to submission to HUD since early application submission could be premature for applicants in some instances and put an additional burden on the clearinghouses. Applicants are encouraged to contact the appropriate HUD field office and clearinghouses regarding their preferred procedure for obtaining A-95 review on housing applications.

14. Based on an observation by HUD staff that clearinghouses should not have to complete reviews on housing applications which, after preliminary screening, are found to be unacceptable to HUD for technical processing, a new § 52.102(d) has been added to allow early termination of clearinghouse reviews.

15. Numerous comments were submitted regarding A-95 review procedures for community development block grants in § 52.103. Because new regulations for 24 CFR Part 570 (41 FR 45966, October 18, 1976) allow preapplications to be submitted simultaneously to HUD and clearinghouses, we cannot state, as requested, that HUD will only consider preapplications complete when submitted with A-95 comments or a statement that no comments have been received. However, where preapplications are received without comments HUD may not make a final determination until A-95 comments are received and considered or until the comment period is over and no comments have been received. Many commenters stated that application assurances should be sent to clearinghouses for review. Since assurances are submitted in a standardized format providing little basis for clearinghouse comments, they need not be sent to the clearinghouses for review. Although it is HUD's responsibility to review the applicants' compliance with required assurances, clearinghouses may submit for HUD's consideration comments regarding the applicants' ability or efforts to fulfill the assurances, which are described in

program regulations and application forms, available from HUD field offices.

16. Because of comments concerning the purpose of submitting the community development block grant applicants' performance reports to clearinghouses in § 52.103(b), the final regulations have been clarified to indicate that performance reports are to be submitted to clearinghouses for background information purposes only, not for review.

17. Section 52.106 has been expanded to include a reference to the A-95 review provisions in 24 CFR Part 600.73(e)(2) for land use and housing elements developed by recipients of Comprehensive Planning Assistance Program funds.

18. A new section, § 52.109, has been added which incorporates the A-95 requirements for Areawide Housing Opportunity Plans. As the Areawide Housing Opportunity Plan program is now an on-going HUD program rather than a demonstration as it was in the first year of the program, it is now being brought under the normal A-95 requirements.

19. Section 52.201, concerning State Plans, has been clarified to emphasize that States and areawide clearinghouses should work together in the development of State and areawide plans as well as in their formal A-95 review to assure intergovernmental coordination and consistency.

20. Due to questions regarding the applicability of the provision in § 52.202(b)(1) requiring a memorandum of agreement to coordinate planning in multi-jurisdictional areas, language has been added to clarify that this provision applies only to multi-jurisdictional or areawide applicants for planning assistance. The question was raised concerning whether urban counties receiving HUD community block grant funds for planning purposes would be considered multi-jurisdictional agencies in this context. It was determined that this would be left up to the discretion of the appropriate areawide comprehensive planning agency, which would decide whether a memorandum of agreement was necessary to assure coordination of planning undertaken by the urban county with areawide planning activities.

21. One general comment noted that it would be helpful if excerpts from program regulations describing A-95 procedures were included in the HUD A-95 regulations, rather than simply being referenced. Because specific procedures and regulations for any program may change frequently, inclusion of excerpts from program regulations would be impractical.

IMPACT STATEMENTS

The Department determined that an Environmental Impact Statement was not required with respect to the interim rule. As the revisions to the final regulations are not substantial, this determination still applies. The economic and inflationary impacts of the interim regulations were carefully evaluated in accordance with OMB Circular A-107 and a Finding of Inapplicability was made in accordance with HUD Handbook 1390.1 (38 FR 19182). This finding still applies and is available for public inspection in the Office of the Rules Docket Clerk at the above address.

In consideration of the foregoing, Title 24 CFR, Subtitle A is amended by revising Part 52 to read as follows:

Subpart A—General Provisions

Sec.

52.1 Scope and applicability.

52.2 Definitions.

52.3 Responsibilities for administration.

Subpart B—Project Notification and Review Procedures

52.100 General.

52.101 Requirements applicable to all HUD programs.

52.102 Housing programs.

52.103 Community development block grants.

52.104 Freestanding housing assistance plans. [Reserved]

52.105 Assistance for new communities.

52.106 Comprehensive planning assistance.

52.107 National flood insurance program.

52.108 Federal disaster assistance program.

52.109 Areawide Housing Opportunity Plans.

Subpart C—Other Circular Requirements

52.200 Direct Federal development. [Reserved]

52.201 State plans.

52.202 Multijurisdictional areas.

APPENDIX—HUD PROGRAMS COVERED BY OMB CIRCULAR NO. A-95

AUTHORITY: Sec. 7(d) of Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 52.1 Scope and applicability.

(a) This subpart of the regulations covers those policies and procedures relating to the roles and responsibilities of HUD, in cooperation with authorized A-95 clearinghouses, in the Departmental programs pursuant to OMB Circular No. A-95.

(b) The policies and procedures contained herein are applicable to establishing uniform regulations for implementing the A-95 process in Departmental programs identified in:

(1) Appendix I of the *Catalog of Federal Domestic Assistance*, or the Appendix to these regulations, whichever bears the later date.

(2) Direct Federal Development Activities as defined in Part II, Attachment A of OMB Circular No. A-95.

(3) State plans as defined in Part III, Attachment A of OMB Circular No. A-95.

(4) Coordination of Planning in Multijurisdictional Areas as defined in Part IV, Attachment A of OMB Circular No. A-95.

§ 52.2 Definitions.

(a) The definitions and terminology used in these regulations shall be consistent with:

(1) Those contained in Departmental program regulations as published in the *FEDERAL REGISTER*, and

(2) Those used in Part V, Attachment A of OMB Circular No. A-95, Revised (41 FR 2052).

(b) "Freestanding Housing Assistance Plan." A Freestanding Housing Assistance Plan (HAP) is an approved housing assistance plan under Title II of the Housing and Community Development Act of 1974 which has been submitted by a unit of general local government which is not participating in the Community Development Block Grant Program at the time of approval of the HAP.

(c) "OMB Circular No. A-95." All references to "OMB Circular No. A-95" or "the Circular" shall mean the Office of Management and Budget (OMB) Circular No. A-95, Revised (41 FR 2052), dated January 13, 1976 or subsequent amendments.

(d) "HUD Field Offices." All references to HUD field offices shall mean all HUD Area Offices, Service Offices and Valuation Stations with the exception that it shall apply to Regional Offices for any programs not delegated to Area and Service Offices.

§ 52.3 Responsibilities for administration.

(a) The Assistant Secretary for Community Planning and Development shall be assisted by the Director of the Office of Community Planning and Program Coordination in carrying out the following functions:

(1) Provide lead responsibility for coordinating and developing a uniform set of departmental procedures for implementing these regulations;

(2) Serve as the Department's liaison with the Office of Management and Budget and other Federal agencies on A-95 matters;

(3) Serve as liaison with other Headquarters units and Regional Offices and concur in all Headquarters instructions and regulations which refer to the A-95 process;

(4) Issue policies and procedures within the scope of these regulations and develop such written supplemental material as may be necessary to implement these regulations;

(5) Develop and conduct training and information programs, monitoring systems and periodic evaluations designed to further HUD program officials' understanding of the A-95 process, to improve HUD's implementation of the process, and to increase the benefits of the A-95 process with regard to HUD's programs.

(b) All other Assistant Secretaries, the General Counsel and program Administrators with A-95 compliance responsibilities shall cooperate with the Assistant Secretary for Community Planning and Development in the implementation of these regulations, including the insertion of the A-95 requirements in their program regulations and other program guidance material, the development of special A-95 procedures and guidelines where needed, and the designation of an A-95 official for the purposes of contact and coordination.

(c) Within the Regional Office, the Regional Administrator shall designate a staff member responsible for A-95 matters. The A-95 responsibilities shall be set forth in the designee's job description and time shall be allocated to this function through the departmental time and cost reporting system. He shall be the principal advisor to the Regional Administrator on A-95 matters delegated to field offices and have the following duties:

(1) Oversee and monitor A-95 activities on all HUD programs in the Region, including field office compliance with the A-95 review requirements;

(2) Act as the principal point of contact for all field offices relating to A-95 policies and procedures;

(3) Assist the Area Office A-95 liaison officer in the training of field staff and clearinghouses concerning HUD program procedures under OMB Circular No. A-95;

(4) Serve as the HUD representative to the appropriate Federal Regional Council in its A-95 activities;

(5) Assist field offices in resolving problems or issues raised through the A-95 process;

(6) With the assistance and input of other HUD Regional units and field offices, periodically evaluate the A-95 process and procedures for the purpose of improving compliance, upgrading the procedures, and recommending changes where needed;

(7) Serve as liaison with the staff of the Assistant Secretary for Community Planning and Development on issues related to intergovernmental coordination and A-95 matters;

(d) Within each field office, the Manager or Supervisor shall designate a staff member responsible for A-95 liaison. The A-95 responsibilities shall be set forth in the designee's job description and time shall be allocated to

this function through the departmental time and cost reporting system. He shall be the principal advisor to the Office Manager or Supervisor on A-95 matters and have the functions outlined below:

(1) In Area Offices, the person designated as responsible for A-95 liaison shall:

(i) Oversee and monitor A-95 activities on all HUD programs which are covered by OMB Circular No. A-95 through periodic evaluations of the A-95 process;

(ii) Provide necessary training to assure that clearinghouses and the various program staff in the Area and Service Offices and Valuation Stations understand HUD program procedures implementing A-95 requirements;

(iii) Advise and provide assistance to local governments and clearinghouses to strengthen the coordination and intergovernmental relations aspects of the A-95 process and to assure that the obligatory referrals are being made by clearinghouses to State and local environmental, civil rights and coastal zone management agencies;

(iv) Maintain periodic contact with clearinghouses in the Area Office jurisdiction to (a) discuss any changes in HUD program requirements, funding level or time tables which might impact on clearinghouse procedures or work load, so that clearinghouses have sufficient notice to make necessary adjustments in their processing, (b) explain the types of comments which would be helpful to HUD in reviewing applications, and (c) provide periodic feedback to clearinghouses regarding the usefulness of comments received and the way in which they have been incorporated into HUD's decision-making process;

(2) The following functions shall be performed in the Area Offices, Service Offices and Valuation Stations by the staff person designated to provide A-95 liaison:

(i) Develop definitive procedures for carrying out the A-95 responsibilities in the field office to assure efficient processing and review of all documents related to A-95 activities and to assure adherence to all A-95 requirements and time constraints including coordination with personnel responsible for planning, environmental and civil rights concerns;

(ii) Advise on the maintenance of appropriate A-95 and community development and other relevant information to be kept in a field office reference library available to all program staff;

(iii) Maintain liaison with the Regional Office for purposes of identifying problems and issues and suggesting how policies and procedures can be modified to improve the A-95 process.

Subpart B—Project Notification and Review Procedures

§ 52.100 General.

(a) *Purpose.* The principal purpose of this subpart is to provide for intergovernmental coordination of Federally assisted and insured programs and projects. Other purposes are set forth in paragraph 1 of Part I, Attachment A of the OMB Circular No. A-95.

(b) *Applicability to HUD programs.* The general requirements of this subpart are set forth in Part I, Attachment A of OMB Circular No. A-95, and are fully applicable to all projects and activities for which Federal assistance or insurance is being sought from HUD under the programs listed in Appendix I of the *Catalog of Federal Domestic Assistance* or the Appendix to these regulations, whichever bears the later date.

(c) *Coverage and interpretation.* Questions of program coverage, requests for procedural variations from the normal review procedures by HUD officials, and questions of interpretation of the A-95 Circular and these regulations shall be addressed to the Assistant Secretary for Community Planning and Development (CPD). The Assistant Secretary for CPD shall refer those matters required by paragraph 8 of Part I, Attachment A of OMB Circular No. A-95 (coverage, exemptions and variations to the Project Notification and Review system), to OMB for overall policy determination.

(d) *General description.* Part I, Attachment A of OMB Circular No. A-95, sets forth a general A-95 review and comment process for applications for most types of Federal assistance and describes specific procedures applicable only to Federal housing assistance programs. Section 52.101 of these regulations sets forth procedures applicable to all of HUD's programs, both housing and nonhousing, which are covered by Part I, Attachment A of the Circular. A-95 procedures unique to HUD's housing programs are described in § 52.102. Specific procedures for other HUD programs are described under the appropriate program title, beginning with § 52.103.

§ 52.101 Requirements applicable to all HUD programs.

This section sets forth specific A-95 requirements or procedures which apply to all HUD programs listed in Appendix I of the *Catalog of Federal Domestic Assistance* or the Appendix to these regulations, whichever bears the later date. (For variations or procedures unique to individual programs, see the applicable sections of the regulations for those programs and subsequent sections of these regulations.)

(a) *Informing potential applicants.* HUD field office staff responsible for

specific programs will provide potential applicants and clearinghouses with information on the requirements of the Circular and these implementing regulations in program information materials, in response to inquiries, in pre-application conferences, in Developers' Packets or by other appropriate means which will assure that applicants and clearinghouses understand HUD program procedures under OMB Circular No. A-95.

(b) *Applicants working closely with clearinghouses.* Whether a particular program requires or permits review of an application by clearinghouses before submission to HUD or whether HUD submits the application to clearinghouses, applicants shall be advised by HUD field office staff that prior contact with a clearinghouse may facilitate clearinghouse reviews and HUD processing of the application.

(c) *Contents and basis of clearinghouse comments.* (1) The subject matter of clearinghouse comments and recommendations is discussed in paragraph 5, Part I, Attachment A of OMB Circular No. A-95. In addition, HUD program officials shall, with concurrence of the Office of Community Planning and Program Coordination, issue A-95 review guidelines specifying the types of clearinghouse comments which would be useful to the responsible HUD officials in making a determination on an application. Although these guidelines will be designed for clearinghouses to use when developing comments, their comments need not be restricted to the subject matter of the guidelines. HUD program staff are required to consider all A-95 comments submitted by or through clearinghouses prior to making a determination on an application.

(2) HUD expects that State and areawide clearinghouses will use all relevant comprehensive and functional plans, such as the housing and land use elements required by the Comprehensive Planning Assistance Program (24 CFR Part 600), State Coastal Zone Management Programs and other State and regional planning considerations as a basis for their review of applications for HUD assistance and for their assessment of the consistency of proposed projects with existing plans. Comments which are based on documented sources resulting from the planning process should be identified by the clearinghouse and will be used by the responsible HUD official in making decisions on applications. Comments should clearly indicate whether the clearinghouse recommends that the application be approved; it recommends approval only with specific and major substantive changes; or it recommends against approval.

(d) *Acceptance of application.* Except in those instances when program regulations state that HUD is responsible for sending the application to the clearinghouse for review or provide for concurrent submission to HUD and the clearinghouses, no application for HUD assistance shall be accepted for processing without assurance by the applicant that the A-95 process has been followed, or is not applicable, depending on the regulations or instructions for each program. For all program applications for which clearinghouse review is required or permitted prior to submission to HUD, note paragraph 4(f) of Part I, Attachment A of OMB Circular No. A-95, which states that applications submitted to a Federal agency shall be accompanied by (1) all comments and recommendations made by or through clearinghouses, along with a statement that such comments have been considered prior to submission of the application; or (2) where no comments have been received from a clearinghouse, a statement that the A-95 procedures for the relevant program have been followed and that no comments or recommendations have been received.

(e) *HUD use of clearinghouse comments.* (1) General. Prior to making a decision on an application, HUD staff responsible for review of applications will take into consideration all clearinghouse comments and comments from public or private organizations and agencies, or units of government submitted through clearinghouses to HUD within the designated time period.

(2) Any comments resulting from review by the State clearinghouse or State agency responsible for the State coastal zone management program or a substate agency or local government which has designated responsibilities under the State coastal zone management program regarding a project's relationship to the approved coastal zone management program shall be considered by HUD in meeting its responsibilities under the Coastal Zone Management Act of 1972 (86 Stat. 1280). Comments resulting from the obligatory referrals by clearinghouses to State and local environmental agencies and civil rights agencies shall be considered by HUD in meeting its responsibilities under the relevant environmental and civil rights statutes.

(3) *Adverse Comments.* (i) Clearinghouse comments on an application or proposal which (A) recommend against approval, (B) recommend approval only with specific and major substantive changes, (C) identify inconsistency with a State, areawide, or local plan, or (D) identify non-compliance with applicable civil rights or environmental laws should be fully substantiated and documented when sub-

mitted to HUD. Program staff shall carefully examine all such comments received on applications submitted to HUD and shall take appropriate actions to resolve the problems if it is possible that the application could be selected or approved. Appropriate actions might include discussions and conferences with the applicant, the clearinghouse(s) and other relevant Federal, State and local agencies to attempt to resolve the problem. In such cases the program staff shall consult with the staff member designated to provide A-95 liaison, who shall be involved in preparing the official recommendations to the responsible HUD program official. In instances where clearinghouse comments identify non-compliance with civil rights and environmental laws, the program staff shall consult legal counsel and appropriate civil rights or environmental quality staff at the appropriate field office level and/or Headquarters.

(ii) If after consulting in accordance with subdivision (i) of this subparagraph, the HUD program official (A) disagrees with a clearinghouse conclusion that an application is inconsistent with a State, areawide or local plan or, if in agreement, feels the application should nevertheless be approved, or (B) disagrees with a clearinghouse conclusion that an application violates applicable civil rights or environmental laws, that official shall, after consultation with the Regional A-95 liaison and review of the pertinent statutory provisions, obtain the concurrence of the Regional Administrator. The Regional Administrator may waive the provision for Regional referral and concurrence on a program-by-program basis when a determination is made by the Regional Office through monitoring of the field office(s) that the A-95 procedures are being adhered to. Waivers may also be made when statutory restrictions on the length of processing time make this provision inoperable. The Regional Administrator shall obtain approval in writing from the Assistant Secretary for Community Planning and Development prior to the issuance of such waivers. When a clearinghouse recommendation against approval is received on an application which is to be approved at Headquarters, the responsible program official must obtain concurrence by the Assistant Secretary for Community Planning and Development before approving the application. The Assistant Secretary for CPD may waive this referral and concurrence provision when a determination is made by the Assistant Secretary that the A-95 procedures are being adhered to by officials for the relevant program.

(iii) When comments have identified conflicts or duplication with projects

funded by another Federal agency, the responsible HUD official shall take necessary action to resolve the problem, including consultations with the other agency to determine whether the application should be approved, which agency should be the funding agency and/or if the project can be jointly funded.

(f) *Notification to clearinghouses of HUD actions.* (1) In accordance with paragraph 6(c), Part I, Attachment A of OMB Circular No. A-95, all clearinghouses that have reviewed an application must be notified by HUD within 7 working days of any major action taken on the application by HUD, such as an award, rejection, return for amendment, deferral or withdrawal. Standard Form 424, promulgated by Federal Management Circular 74-7 and published as Attachment E to OMB Circular No. A-95, shall be used for this purpose unless otherwise provided for in HUD issuances.

(2) In accordance with paragraph 6(d), Part I, Attachment A of OMB Circular No. A-95, an explanation shall be provided by HUD to a clearinghouse along with the notification of action taken described above whenever HUD approves an application substantially as submitted although the clearinghouse recommended against approval or recommended approval only with specific and major substantive changes. Standard Form 424 shall be used for this purpose by checking block No. 37, "yes", and inserting the explanation in Section IV of the Form.

(3) Explanations required in § 52.101(f)(2) of these regulations shall be provided only to clearinghouses themselves and not to agencies commenting through such clearinghouses. HUD will respond only to recommendations that are clearly identified as the official comments of the clearinghouse. Where other agencies or groups submit comments recommending disapproval and these comments are merely attached to a transmittal letter from the reviewing clearinghouse without an indication that the clearinghouse concurs, HUD will consider such comments, but will not provide an explanation should the application be approved unless the clearinghouse specifically requests an explanation. Where a clearinghouse has requested a response to negative comments submitted by another agency, the clearinghouse is responsible for transmitting HUD's explanation back to the agency originating the comment.

(g) *Amendments after application approval.* Program regulations should specify the types of changes or amendments to an approved application, project or program which are consid-

ered significant enough to require submission to HUD for approval. All such changes or amendments are subject to the A-95 process and require clearinghouse review. Amendments not required to be submitted to HUD for approval need not be submitted for clearinghouse review. In general, all changes or amendments that might alter the direction, nature, scope, location or scale of a project or activity being supported or might involve changes in the beneficiary population or target group being served would be subject to review. An amendment exceeding 10 percent of the budget will generally constitute a major action. Applicants should be instructed to consult with the clearinghouse to determine if it wishes to review the proposed changes or amendments if there is a question regarding their significance. Clearinghouses shall have 30 calendar days from receipt to review all proposed amendments to approved applications unless the applicant and funding agency decide jointly to extend the review period.

(h) *Compliance with Executive Order 11988 Regarding Floodplain Management.* [Reserved]

§ 52.102 Housing programs.

The purpose of this section is to implement, with regard to HUD housing programs, the requirements of the OMB Circular No. A-95, and to clarify application review procedures consistent with those identified above and included in Part I, Attachment A of the OMB Circular No. A-95 (regarding the Project Notification and Review System).

(a) *Scope.* The programs covered by the Circular which are related to housing development are subject to the review procedures, thresholds, and special exemptions identified in paragraph 7, Part I, Attachment A of the Circular. These special provisions apply to HUD housing programs listed in Appendix I of the *Catalog of Federal Domestic Assistance*, or the Appendix to these regulations, whichever bears the later date.

(b) *Submission to clearinghouses.* All applicants intending to apply for HUD housing assistance are strongly encouraged to follow the procedure identified in paragraph 7(d), Part I, Attachment A of OMB Circular No. A-95, whereby the application is submitted directly to the appropriate clearinghouses for review at least 30 calendar days prior to submission to HUD. All comments would then be attached to the application when submitted to HUD. In such cases the application does not have to be transmitted to the clearinghouses by HUD unless significant changes or amendments are made in the application subsequent to its receipt by the clearing-

house. Where such changes or amendments have been made, HUD shall send the revised application to appropriate clearinghouses for a 30-day review. Regional or field offices should issue written instructions to developers and applicants with respect to this procedure describing submission procedures for clearinghouse review and identifying all appropriate clearinghouses.

(c) *HUD processing.* No later than ten working days after direct receipt of an application still requiring clearinghouse review, the Area or Insuring Office will forward a copy of the complete application and attachments to the appropriate State and areawide clearinghouses. Where applicable, HUD will also notify, in accordance with 24 CFR Part 891 (Section 213 of the Housing and Community Development Act of 1974), the unit of general local government of the proposed project and send a copy of that notice to the appropriate areawide clearinghouse. Arrangements should be worked out between areawide clearinghouses and units of general local government to coordinate the submission of comments under the A-95 and 213 review systems. During the clearinghouse and/or local government reviews, processing should proceed concurrently in the HUD Office. However, no decisions will be made until the expiration of the 30-day review period and all A-95 comments, if any, received during that time period have been considered.

(d) *Early termination of clearinghouse review.* If HUD determines that an application which is undergoing the 30-day clearinghouse review has deficiencies which prevent further HUD processing of the application, HUD will provide the clearinghouses with notification to that effect, initially by telephone and followed up by a formal notification of action taken (SF 424) in order that the clearinghouse may quickly terminate its review.

(e) *Clearinghouse review.* Clearinghouses have 30 calendar days from their receipt of an application to review and comment on the application submitted to them from HUD. At their discretion, field offices may allow clearinghouses more than 30 days in which to submit comments to HUD. Clearinghouse reviews and comments may include, but need not be limited to, those items identified in paragraphs 5 and 7(b), Part I, Attachment A of OMB Circular No. A-95 and items specified in any A-95 review guidelines issued for that program by HUD officials. Clearinghouses are encouraged to include a statement about the extent to which the proposed project is consistent with State or areawide plans.

§ 52.103 Community development block grants.

(a) *Complete applications and preapplications.* When submitting an application or preapplication to a clearinghouse, all application materials required to be submitted to HUD, except for Assurances, shall be included for clearinghouse review. Unless program regulations exempt the application from A-95 review requirements or make specific provisions for concurrent review by HUD and clearinghouses, Community Development Block Grant applications will be considered to be complete by HUD only when they are submitted to HUD along with comments from all appropriate State and areawide clearinghouses or, in lieu of comments, with a statement that the clearinghouse has not provided comments.

(b) *Records.* The requirements for records to be maintained by both entitlement and discretionary grantees are set forth in Subpart O of the Community Development Block Grant Regulations (24 CFR Part 570).

(c) *Entitlement grants.* The special procedures to be followed in applying for grants as Entitlement Communities are set forth in Subpart D of the Community Development Block Grant Regulations (24 CFR Part 570). General procedures for meeting the requirements of Part I, Attachment A of OMB Circular No. A-95 (Project Notification and Review System), and provisions concerning the certifications of A-95 compliance and the acceptance of an application for HUD review are also set forth in Subpart D of the Community Development Block Grant Regulations (24 CFR Part 570.300). Requirements concerning the submission of an information copy of the grantee performance report to appropriate clearinghouses simultaneously with submission to HUD are contained in 24 CFR Part 570.906. Clearinghouses should not comment on the performance report, since it is submitted as background information in the review of the current application.

(d) *Discretionary Grants.*—(1) *General.* The procedures to be followed when applying for discretionary grants are set forth in Subpart E, F and G of the Community Development Block Grant regulations. Discretionary grants not requiring preapplications shall follow the normal A-95 procedures set forth in Part I, Attachment A of OMB Circular No. A-95. Modified A-95 procedures involving pre-applications are set forth in Subpart F of the Community Development Block Grant regulations (24 CFR Part 570.435). Modified procedures for the Urban Development Action Grant Program pertaining to eligibility determinations are found in Subpart G (24 CFR Part 570.455).

(2) *Urgent Needs Fund.* In accordance with § 52.101(g) of these regulations, significant changes or amendments to an approved application which require HUD approval are subject to clearinghouse review. If it is unclear as to whether significant changes are involved, the appropriate clearinghouse shall be consulted on the applicability of the A-95 requirements.

(3) *Disaster Assistance.* Exemption from the normal A-95 process for discretionary grants authorized by Section 107(a)(5) of the Housing and Urban Development Act of 1974 (42 U.S.C. 5307) applies only to federally recognized disaster areas and only to applications received by HUD within 120 days of the declaration of the disaster. However, applicants are required to submit an information copy of their application to the appropriate clearinghouses at the same time the application is submitted to HUD.

(4) *New Communities.* Applications involving proposed activities which have previously been the subject of A-95 review as part of an approved New Community Development Plan (as defined in 24 CFR Part 720.2) are not subject to an additional clearinghouse review. 24 CFR Part 720.43(c)(3) defines significant changes or amendments to applications or Development Plans which are subject to the A-95 review conditions identified in § 52.101(g) of these regulations.

§ 52.104 Freestanding Housing Assistance Plans (HAPs). [Reserved]

§ 52.105 Assistance for new communities.

There are separate procedures governing the application for assistance to develop New Communities under Title VII of the Housing and Urban Development Act of 1970, as amended (42 USC 4511, *et. seq.*).

(a) *Types of Assistance.* Applications for original assistance, preapplications and applications for original guarantee assistance, determination of Title VII eligibility, or an interest loan are subject to A-95 review pursuant to 24 CFR Part 720.43.

(b) *Applications for Additional Assistance.* Applications for additional guarantee or interest loan assistance are not subject to A-95 review unless (1) there are significant amendments, as defined in 24 CFR Part 720.43(c)(1), since the last A-95 review; (2) the General Manager of the New Community Development Corporation so requires; (3) a clearinghouse desires to review such further requests; or (4) the New Community Plan has not been reviewed by State and areawide clearinghouses within two years of the date of the application for additional assistance.

(c) *Significant Changes or Amendments.* Significant changes or amendments to applications or to approved development plans which require A-95 review are defined in 24 CFR Part 720.43(c). In accordance with § 52.101(g) of these regulations, clearinghouses shall have 30 days in which to review and comment on such changes or amendments.

(d) *Plan of Acquisition and Disposition for a New Community Development Project.* A plan of acquisition and disposition to be adopted by the Board of Directors of the New Community Development Corporation shall be subject to A-95 review.

(e) *Public Service Grants (Section 715), Supplementary Grants for Public Facilities (Section 718), Technical Assistance (Section 719) and Special Planning Assistance (Section 720).* Grants or other assistance authorized by Sections 715, 718, 719 and 720 of the Housing and Urban Development Act of 1970, as amended (42 U.S.C. 4511, *et. seq.*), are not subject to A-95 review.

§ 52.106 Comprehensive Planning Assistance.

All applicants for Comprehensive Planning Assistance are required to comply with the requirements of Part I, Attachment A of OMB Circular No. A-95 and any additional requirements identified in the Comprehensive Planning Assistance Regulations (24 CFR Part 600). In addition to the A-95 review of regular applications required under 24 CFR Part 600.160, clearinghouses will, under § 600.73(c)(2), have the opportunity to review the land use and housing elements developed by applicants.

§ 52.107 National Flood Insurance Program.

(a) *Applications for eligibility and participation in program.* Communities that submit an application for participation under the emergency provisions of Part 1909 of the National Flood Insurance Program shall follow the A-95 procedures identified in Part 1909 of those regulations. The A-95 procedures identified in Part 1910 shall be followed in establishing eligibility for conversion to the Regular Program.

(b) *Requests for actions affecting floodplain management requirements.* The A-95 procedures also apply when communities request the following: (1) Exceptions from the flood plain management requirements pursuant to Part 1910 of the National Flood Insurance Program (however, A-95 procedures are not applicable to requests by individual property owners for map corrections for Federal Insurance Administration Flood Hazard Boundary Maps and Flood Insurance Rate Maps

issued pursuant to Part 1915); (2) determinations pursuant to Part 1911 regarding applicable rates based on completion of construction of flood protection system involving Federal funds, which will significantly limit the area of special flood hazards; (3) determinations pursuant to Part 1911 that substantial completion of the flood protection system has been effected; and (4) determinations pursuant to Part 1917 on appeals from flood elevation determinations.

§ 52.108 Federal Disaster Assistance Program.

The assistance authorized by the Disaster Relief Act of 1974 (PL 93-288) and implemented by 24 CFR Part 2205 is not covered by the requirements of the A-95 Circular except for the State Disaster Preparedness Grant program. Applications for State Disaster Preparedness Grants (Title II of the Disaster Relief Act of 1974 and implemented by 24 CFR Part 2205) are subject to the provisions of Parts I and III, Attachment A of the A-95 Circular (Project Notification and Review System) and HUD Handbook 3300.8. For disaster assistance under Title I of the Housing and Community Development Act of 1974, see § 52.103(d)(3) of these regulations.

§ 52.109 Areawide Housing Opportunity Plans.

Requirements for Areawide Housing Opportunity Plans are set forth in 24 CFR 891, Subpart E (43 FR 2358, January 16, 1978). These regulations set forth slightly modified A-95 requirements since the areawide planning organizations (APO's) eligible to submit "requests for Plan approval" to HUD will, in most instances, be designated A-95 areawide clearinghouses.

(a) Section 891.504(d) of the regulations for this program requires that in order to be approvable, an Areawide Housing Opportunity Plan must be "coordinated with appropriate State and areawide agencies, including A-95 clearinghouses and Housing Finance Development Agencies to ensure general consistency of data on areawide needs between the Plan and any State or other areawide housing and housing-related plans applicable to all or part of the Plan area." At a minimum, this coordination must meet the normal A-95 notification and review requirements, including (1) notification to the appropriate State clearinghouse(s) and any appropriate areawide clearinghouses other than the APO at least 60 days prior to submission of the "request for Plan approval" to HUD and, (2) if the APO is a clearinghouse, making the referrals to civil rights, environmental, coastal zone and other appropriate agencies as required by OMB Circular No. A-95.

In accordance with paragraph 4.f., Part I, Attachment A of the Circular, any A-95 comments received as a result of these notifications and referrals must be submitted to HUD along with the request for Plan approval. Under § 891.505(b)(14), the APO may also submit a statement describing other coordination activities undertaken to meet the requirements of § 891.504(d).

(b) Another requirement for approvable Housing Opportunity Plans, set forth in § 891.504(e), states that "the Plan shall include evidence that it has been and will be used in the A-95 review of all applications for community development, housing assistance and all other programs or activities which are subject to APO review under HUD regulations implementing OMB Circular No. A-95."

Subpart C—Other Circular Requirements

§ 52.200 Direct Federal Development. [Reserved]

§ 52.201 State Plans.

The purpose of this section is to assure that all HUD programs requiring State plans as a precondition for assistance are in compliance with Part III, Attachment A of OMB Circular No. A-95. Currently, these requirements cover State plans developed under the Comprehensive Planning Assistance Program and State Disaster Preparedness Grants. (For a definition of State plans, see paragraph 2(b), Part III, Attachment A of OMB Circular No. A-95.)

(a) The Comprehensive Planning Assistance Program regulations in 24 CFR Part 600 require that States develop housing and land use elements in order to remain eligible for assistance. In accordance with Part III of the Circular, the Governor or his designee will be afforded 45 days prior to submission of the State plans to HUD in which to comment on the relationship of the plans and strategies developed under the Comprehensive Planning Assistance Program to other State plans, strategies and programs, and to those of affected areawide and local jurisdictions. The Governor is urged to involve areawide clearinghouses in the early development and review of State plans, particularly where such plans or strategies have specific applicability to or affect areawide or local plans, strategies and programs. Any such comments shall be transmitted with the required plans, plan element or strategy. State agencies are also encouraged to work with areawide clearinghouses in the development of areawide plans and strategies to assure their consistency with State plans and policies.

(b) State disaster preparedness grants (P.L. 93-288, Sections 201 (c) and (d)) are subject to the provisions of Parts I and III, Attachment A of OMB Circular No. A-95, except as modified in HUD Handbook 3300.8, Requirements and Guidelines for State Disaster Preparedness Grants. This includes a requirement for the submittal of a State plan (work plan) as part of the grant application.

§ 52.202 Coordination of Planning in Multi-jurisdictional Areas

In the interest of improving the quality and reducing the costs of regional development, the Department will encourage States to establish areawide planning and development districts which, to the maximum degree feasible, serve to coordinate all development planning occurring within each governmental unit; between jurisdictions at the same level of government; and between States, regions and local governments and which have the capacity to participate in a unified fashion in the review and comment procedures under Part I, Attachment A of OMB Circular A-95. The Department will encourage each State, acting so as to involve all of its principal agencies having planning and development responsibilities, to assume a leadership role in delineating areawide planning jurisdictions and establishing unified or coordinated areawide organizations as called for in Part IV of OMB Circular A-95.

(a) *Coordinated Planning and Development Districts.* In allocating assistance under the Comprehensive Planning Assistance Program and other programs funding multijurisdictional agencies, HUD will utilize to the fullest extent possible, agencies and geographical areas that have been designated by a State for carrying out planning and coordination on a multijurisdictional basis.

(1) Prior to the recognition or redesignation of any planning and development district or region, the Department will provide the Governor(s) of the State(s) a period of 30 calendar days to review the proposed boundaries thereof and comment on their relationship to the planning and development districts established by the State. The boundaries of areas recognized under any HUD program are to conform to those of State-established planning and development districts unless there is clear justification for not doing so, such as non-recognition of contiguous potential growth areas. In cases where State-established planning and development districts are not used, the Governor or his designee shall be provided an explanation for not doing so.

(2) Where a State has not established planning and development dis-

tricts or regions, units of general local government and the appropriate Federal Regional Council will be consulted prior to HUD recognition of the area to assure consistency with districts or regions which may have been established by local agreement or under other Federal programs.

(3) In Interstate Areas, HUD will, whenever possible, utilize agencies designated to perform metropolitan areawide comprehensive planning which have the capacity to represent entire metropolitan areas. If, after consultation with the Governors or their designees, the Federal Regional Council and the elected official of the principal general local governments in the area, it appears impossible to agree on a single organization and common boundaries, HUD will require one subregional intrastate planning agency within such metropolitan area to coordinate any planning assistance activities supported by HUD through the designated A-95 clearinghouse mechanism or, in the absence of such a clearinghouse, a metropolitan coordinating mechanism recognized by HUD.

(4) HUD field offices will notify the Office of Community Planning and Program Coordination at HUD Headquarters and the appropriate Federal Regional Council of any districts proposed to be recognized at least 30 days prior to a final determination. Any conflicts regarding proposed recognition shall be brought before the appropriate Federal Regional Council. The Federal Regional Council will notify OMB of all proposed designations.

(b) *Coordination of Planning Activities.* Applications for Comprehensive Planning Assistance, Community Development Block Grants and/or other forms of HUD planning assistance shall, to the fullest extent possible, be coordinated with related planning and development activities now being carried out by the A-95 clearinghouse or the areawide comprehensive planning agency where there is no clearinghouse performing the planning function.

(1) If the proposed planning assistance is for a multijurisdictional area or district including some or all of the officially designated area, and the submission is from an applicant other than the designated areawide comprehensive planning agency, a memorandum of agreement shall be entered into between the applicant and the officially designated comprehensive planning agency which describes the means by which their planning activities will be coordinated. (The designated comprehensive planning agency may determine whether an urban county receiving HUD community development block grant funds for plan-

ning purposes will be required to enter into a memorandum of agreement.) Such agreements shall include but need not be limited to the following matters:

(i) Identification of relationships between the planning activities proposed by the applicant and the planning and related activities of the areawide comprehensive planning agency which will require coordination;

(ii) The organizational and procedural arrangements for coordinating such activities such as overlapping board memberships, procedures for joint reviews of projected activities and policies and information exchange;

(iii) Cooperative arrangement for sharing planning resources including funds, personnel, facilities, and services;

(iv) Agreements regarding social, economic, demographic and environmental base data, statistics, and projections constituting the basis on which planning in the area will proceed.

(2) Where the applicant has been unable to develop such an agreement, he will submit to HUD a statement indicating the efforts he has made to secure agreement and the issues that have prevented it. In such case, the responsible HUD official in consultation with the appropriate Federal Regional Council and State clearinghouse will have 30 days in which to resolve these issues before acting on the application.

(c) *Joint Funding.* In allocating assistance, HUD will utilize, to the fullest extent possible, opportunities for joint funding with other Federal programs which will enhance the quality, comprehensive scope and coordination of planning in multijurisdictional areas.

APPENDIX—HUD PROGRAMS COVERED BY OMB CIRCULAR NO. A-95

This appendix contains a listing of HUD programs which are currently covered by OMB Circular No. A-95. For convenience, these HUD programs are divided into housing and non-housing programs and the housing programs are listed by categories. Each entry contains the program number by which the program is listed in the *Catalog of Domestic Assistance*, the program title, the popular name (usually from the pertinent section of the authorizing legislation) and the authorization.

HOUSING PROGRAMS

Single Family Housing

14.105 Interest Subsidy—Homes for Lower Income Families (Section 235(i) of the National Housing Act, as amended in 1968; PL 90-448; 12 U.S.C. 1715(b), 1715(z))

14.117 Mortgage Insurance—Homes (Section 203(b) of the National Housing Act; PL 73-479; 12 U.S.C. 1709, 1715(b))

14.118 Mortgage Insurance—Homes for Certified Veterans (Section 203(b) of the National Housing Act; PL 73-479; 12 U.S.C. 1709, 1715(b))

14.119 Mortgage Insurance—Homes for Disaster Victims (Section 203(h) of the National Housing Act; PL 73-479; 12 U.S.C. 1709, 1715(b))

14.120 Mortgage Insurance—Homes for Low and Moderate Income Families (Section 221(d)(2) of the National Housing Act, as amended in 1954; PL 83-560; 12 U.S.C. 1715(b), 1715(l))

14.121 Mortgage Insurance—Homes in Outlying Areas (Section 203(i) of the National Housing Act; PL 73-479; 12 U.S.C. 1709, 1715(b))

14.122 Mortgage Insurance—Homes in Urban Renewal Areas (Section 220 Homes; Housing Act of 1954; PL 83-560; 12 U.S.C. 1715(b), 1715(k))

14.125 Mortgage Insurance—Land Development and New Communities (Title X of the National Housing Act, as amended in 1965 and thereafter; PL 89-117; 12 U.S.C. 1749(aa))

Multifamily Housing

Subsidized

14.103 Interest Reduction Payments—Rental and Cooperative Housing for Lower Income Families (Section 236 of the National Housing Act, as amended in 1968; PL 90-448; 12 U.S.C. 1715)

14.146 Public Housing—Acquisition (Turnkey and Conventional Production Methods; U.S. Housing Act of 1937, as amended; PL 75-412; 42 U.S.C. 1401-1435)

14.149 Rent Supplements—Rental Housing for Lower Income Families (Title I of the Housing and Urban Development Act of 1965; PL 89-117; 12 U.S.C. 1701(s))

14.156 Lower Income Housing Assistance Program (Section 8 Housing Assistance Payments Program for Lower Income Families (new and rehab. only); Housing Act of 1937, Section 8, as amended by the Housing and Community Development Act of 1974; PL 93-383; 88 Stat. 662; 42 U.S.C. 1437(f))

14.157 Housing for the Elderly and Handicapped (Section 202 Housing; Housing Act of 1959, as amended by the Housing and Community Development Act of 1974, Title II, P.L. 86-372, 12 U.S.C. 1701q, 73 Stat. 654, 667)

Unsubsidized

14.127 Mortgage Insurance—Mobile Home Parks (Section 207 Mobile Home Parks; National Housing Act, as amended in 1955; PL 84-345; 12 U.S.C. 1713)

- 14.134 Mortgage Insurance—Rental Housing (Section 207 of the National Housing Act, as amended in 1938; PL 75-424; 12 U.S.C. 1713)
- 14.135 Mortgage Insurance—Rental Housing for Moderate Income Families (Section 221(d)(4) of the National Housing Act, as amended in 1959; PL 86-372; 12 U.S.C. 1715(l))
- 14.137 Mortgage Insurance—Rental Housing for Low and Moderate Income Families, Market Interest Rate (Section 221(d)(3) Market Rate; National Housing Act, as amended in 1954; PL 83-560; 12 U.S.C. 1715(l))
- 14.138 Mortgage Insurance—Rental Housing for the Elderly (Section 231 of the National Housing Act, as amended in 1959; PL 86-372; 73 Stat. 654; 12 U.S.C. 1715(v))
- 14.139 Mortgage Insurance—Rental Housing in Urban Renewal Areas (Section 220 Multifamily; National Housing Act as amended in 1954; PL 560; 12 U.S.C. 1745(k))
- 14.141 Nonprofit Housing Sponsor Loans for Planning Low and Moderate Income Housing (Section 106(b), Nonprofit Sponsor Loan Fund; Housing and Urban Development Act of 1968; PL 90-448)
- 14.154 Mortgage Insurance—Experimental Rental Housing (Section 233 (Multifamily) Experimental Housing; Section 233 of the National Housing Act, as amended in 1961 and thereafter; PL 87-70; 12 U.S.C. 1715(x))

Condominiums and Cooperatives

- 14.112 Mortgage Insurance—Construction or Rehabilitation of Condominium Projects (Section 234(d); National Housing Act, as amended by the Housing Act of 1964; Section 234(d), PL 88-560; 1968, Section 234(c), PL 90-448, 82 Stat. 476, 507; 1969, Section 234(c), PL 91-152, 83 Stat. 379, 384; 12 U.S.C. 1715(y))
- 14.115 Mortgage Insurance—Development of Sales-type Cooperative Projects (Section 213 of the National Housing Act; Housing Act of 1950; PL 81-475; 12 U.S.C. 1715(e))

- 14.124 Mortgage Insurance—Investor Sponsored Cooperative Housing (Section 213 Investor Sponsored; National Housing Act as amended, Section 213(a)(3); Housing Act of 1956; PL 84-1020; 12 U.S.C. 1715(e))
- 14.126 Mortgage Insurance—Management-type Cooperative Projects (Section 213 Management Type; National Housing Act, Section 213; Housing Act of 1950; PL 81-475; 12 U.S.C. 1715(e); 1969, PL 91-152, 83 Stat. 379, 383; 1955, PL 84-345, 69 Stat. 635; 1961, PL 87-70, 75 Stat. 149, 179; 1959, PL 86-372; 73 Stat. 654, 656; 1965, PL 89-117, 79 Stat. 451, 469; 1966, PL 89-754, 80 Stat. 1255-66)

Health Facilities

- 14.116 Mortgage Insurance—Group Practice Facilities (Title XI of the National Housing Act, as amended in 1966; PL 89-754; PL 93-383; 12 U.S.C. 1749)
- 14.128 Mortgage Insurance—Hospitals (Section 242 of the National Housing Act, as amended in 1968, PL 90-448; PL 93-383; 82 Stat. 476)
- 14.129 Mortgage Insurance—Nursing Home and Related Care Facilities (Section 232 of the National Housing Act; Housing Act of 1959; PL 86-372; Housing and Urban Development Act of 1969; PL 91-152; 73 Stat. 654 and 83 Stat. 379)

College Housing

- 14.100 College Housing Debt Service Grants (Title IV, Housing Act of 1950, P.L. 81-475)

NON-HOUSING PROGRAMS

- 14.001 Flood Insurance (Applications for community eligibility; Housing and Urban Development Act of 1968, Title XIII; PL 90-448, 82 Stat. 476, 572, as amended; 42 U.S.C. 4011, 4127; 83 Stat. 39, 42 U.S.C. 4056; 83 Stat. 579, 42 U.S.C. 4021, and Flood Disaster Protection Act of 1973, PL 93-234)

- 14.203 Comprehensive Planning Assistance (701 Planning Assistance; Housing Act of 1954, Section 701, as amended; PL 83-560, 68 Stat. 590, 640; 40 U.S.C. 461)

- 14.207 New Communities—Loan Guarantees (Title VII Guarantees; Housing and Urban Development Act of 1970 (Urban Growth and New Community Development Act of 1970); PL 91-609; and Title IV of the Housing and Urban Development Act of 1968)

- 14.218 Community Development Block Grants—Entitlement Grants (Title I of the Housing and Community Development Act of 1974, PL 93-383, 42 U.S.C. 5301-5317)

- 14.219 Community Development Block Grants—Discretionary Grants (Title I of the Housing and Community Development Act of 1974, PL 93-383; 42 U.S.C. 5301-5317)

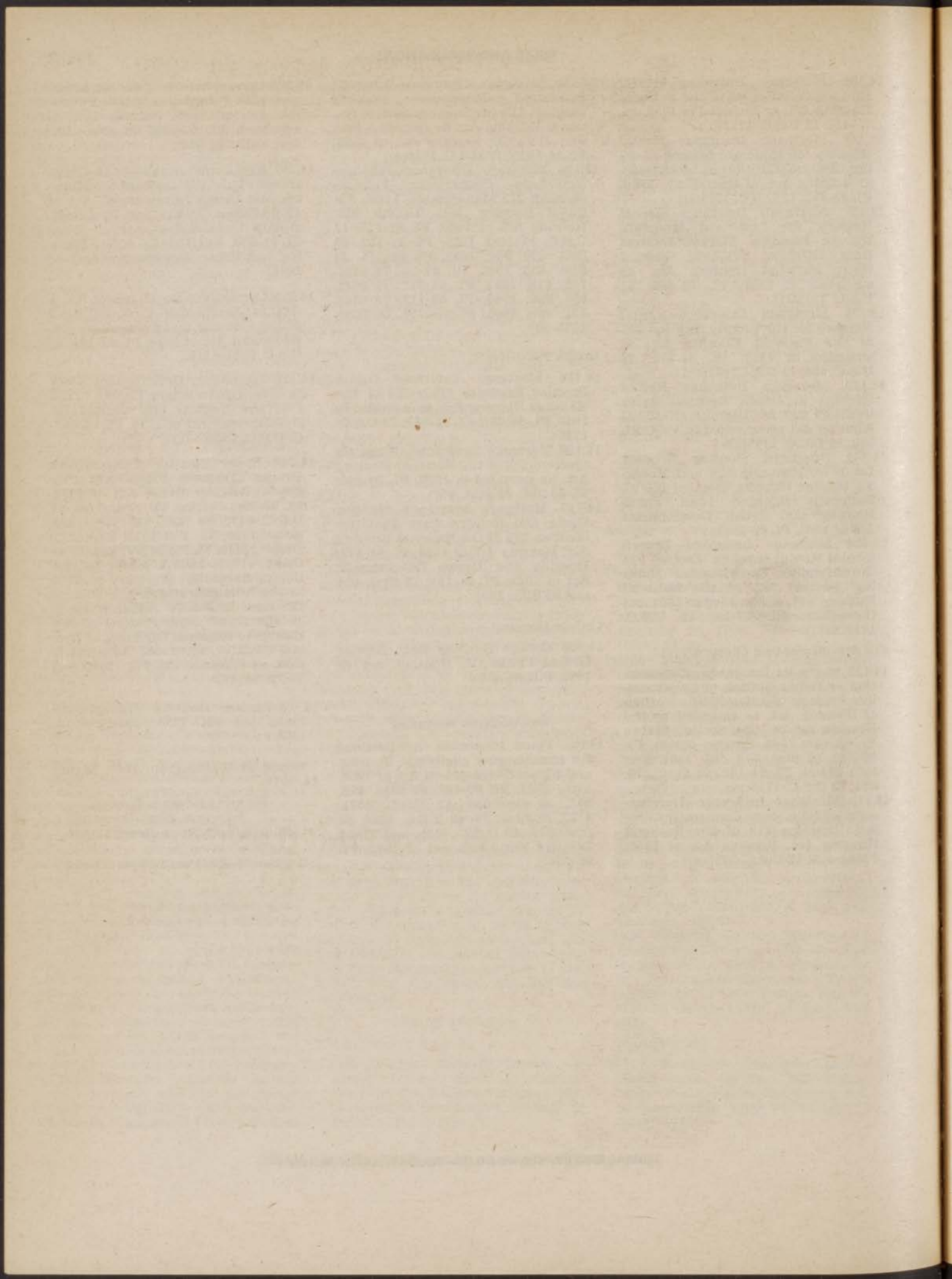
- 14.702 State Disaster Preparedness Grants (Disaster Plans and Programs; Disaster Relief Act of 1974, PL 93-288, Section 201(c) and (d), 42 U.S.C. 5133, 88 Stat. 145; Reorganization Plan No. 1 of 1973; Executive Order 11749, 38 FR 34177; Executive Order 11795, 39 FR 25939; Delegation of Authority, Secretary of HUD to the Administrator of the Federal Disaster Assistance Administration, 39 FR 28227; Redesignation of Authority to Regional Directors of Federal Disaster Assistance Administration, as amended, 39 FR 32045 and 39 FR 40186)

- 14. Areawide Housing Opportunity Plans (43 FR 2358, January 16, 1978.)

Issued at Washington, D.C., March 14, 1979.

PATRICIA ROBERTS HARRIS,
Secretary, Department of
Housing and Urban Development.

[FR Doc. 79-8320 Filed 3-19-79; 8:45 am]



**TUESDAY, MARCH 20, 1979
PART VII**



**DEPARTMENT OF
LABOR**

**Office of Federal Contract
Compliance Programs**

**COMPLIANCE
RESPONSIBILITY FOR
EQUAL EMPLOYMENT
OPPORTUNITY**

Proposed Rule

**Register
of
Proposed
Rules**

[4510-27-M]

DEPARTMENT OF LABOR

Office of Federal Contract Compliance
Programs

[41 CFR Parts 60-1, 60-2, 60-30]

COMPLIANCE RESPONSIBILITY FOR EQUAL
EMPLOYMENT OPPORTUNITY

Proposed Rule

AGENCY: Office of Federal Contract
Compliance Programs, Labor.ACTION: Proposed Amendment of
Parts 60-1, 60-2, and 60-30.

SUMMARY: Section 201 of Executive Order 11246, as amended (30 FR 12319; amended at 32 FR 14303 and 43 FR 46501), provides that the Secretary of Labor shall adopt such rules, regulations and orders as he deems necessary and appropriate to achieve the purposes of the Order. The Department of Labor proposes changes and additions to three parts of its current regulations. This proposal would clarify requirements concerning conciliation agreements. Also, an amendment is proposed to add a requirement that contractors file an annual Affirmative Action Program summary. Finally, new sections to the rules of practice are proposed to add an expedited hearing procedure.

DATES: Comments are invited from
the public until April 19, 1979.

ADDRESSES: Comments should be sent to Edward E. Mitchell, Director, Division of Program Policy, Room C-3324, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, D.C. 20210.

FOR FURTHER INFORMATION
CONTACT:

Edward E. Mitchell, Director, Division of Program Policy, Room C-3324, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, D.C. 20210, telephone (202) 523-9426.

SUPPLEMENTARY INFORMATION: The Department of Labor for some time has been conducting a comprehensive review of its regulations in 41 CFR Chapter 60. Extensive revisions are projected to be published for comment during the first calendar quarter of 1979. Nonetheless, several changes to the current regulations are being proposed at this time to address what the Department considers to be urgent needs and to clarify existing practices.

Previously issued regulations frequently reference "Violations of the Order, equal opportunity clause, the regulations in this chapter, or of applicable construction industry equal employment opportunity requirements," or some variation of the above termi-

nology. See, for example, 41 CFR 60-1.26(a) and 41 CFR 60-30.5(b). The regulations proposed today refer only to violations of the equal opportunity clause. This abbreviated phraseology does not constitute any change in the contractor's obligations, because the equal opportunity clause requires, on its face, compliance with the Executive Order and with the "rules, regulations, and relevant orders of the Secretary of Labor." See Section 202(4) of Executive Order 11246, as amended, 41 CFR 60-1.4(a)(4), and 41 CFR 60-1.4(b)(4). Therefore, a violation of the Executive Order or of any rule, regulation or order of the Secretary of Labor would automatically be a violation of the equal opportunity clause.

This proposed change is made in the spirit of Executive Order 12044 (43 FR 12661, March 24, 1978), in which the President directed that regulations be "written in plain English" and that they be "as simple and clear as possible". The proposed wording eliminates unnecessary verbiage without making any change in Executive Order requirements.

SUMMARY OF PROPOSED CHANGES TO 41
CFR PART 60-1

No substantive changes of Part 60-1 are proposed. However, existing requirements regarding conciliation agreements, the types of relief conciliation agreements must contain, and the consequences for not complying with a conciliation agreement are clarified.

Section 60-1.33 would codify existing OFCCP policy and practice regarding the use of conciliation agreements to resolve Executive Order deficiencies and/or violations.

Section 60-1.34 would codify existing OFCCP policy and practice regarding the procedure to be followed when a violation of a conciliation agreement is alleged. When a violation is alleged, the contractor receives a 15-day written notification, during which time it has the opportunity to show that it is not in violation. The only exception to this 15-day period is where irreparable injury might result from inaction.

SUMMARY OF PROPOSED CHANGES TO 41
CFR PART 60-2

Section 60-2.14 proposes a new requirement under which contractors would prepare a brief summary of their affirmative action programs and the results being achieved under those programs. The AAP summary would be submitted to the OFCCP annually. The summarized submission would permit OFCCP to establish a priority compliance review selection system and to avoid scheduling reviews of contractors who ostensibly are complying with their affirmative action obligations with no assistance required from

the Government. The submission would also permit OFCCP to develop a compliance information system which will allow it and the public to measure the success of the Federal contract compliance program in terms of the number and character of new opportunities achieved for protected groups. Present § 60-2.14, captioned "Compliance status," would be renumbered § 60-2.15.

SUMMARY OF PROPOSED CHANGES TO 41
CFR PART 60-30

The proposal would add a series of regulations at the end of Part 60-30 to govern "Expedited Hearing Procedures" which may be used in situations such as the following: Violation of a conciliation agreement; failure to adopt and implement an acceptance affirmative action program; failure of a contractor to admit to coverage under the Executive Order; failure of a contractor to supply records or other information as required by the Executive Order or its implementing rules, regulations, and orders; or refusal of a contractor or prospective contractor to allow an on-site compliance review to be conducted.

Ordinarily, rules of practice, because they address procedural matters, are not published for comment. However, it is the policy of the Department of Labor, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Therefore, the Department invites the public to comment on the proposed changes in Part 60-30 as well as the other proposals.

Accordingly, 41 CFR Chapter 60 is proposed to be amended as set forth below.

Signed at Washington, D.C. this
14th day of March, 1979.

RAY MARSHALL,
Secretary of Labor.

DONALD ELISBURG,
Assistant Secretary, Employment
Standards Administration.

WELDON J. ROUGEAN,
Director, Office of Federal
Contract Compliance Programs.

1. Part 60-1 is amended by adding a new § 60-1.33 to read as follows:

§ 60-1.33 Conciliation agreements.

(a) If a compliance review, complaint, investigation or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and (1) if the contractor, subcontractor or bidder is willing to correct the violations and/or deficiencies, and (2) if OFCCP or its representative determines that settlement (rather than formal enforcement) is appropriate, a written agreement shall be required. The agreement shall pro-

vide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to), remedies such as back pay and retroactive seniority.

(b) The term "conciliation agreement" does not include "letters of commitment" which are appropriate for resolving minor technical deficiencies.

2. Part 60-1 is further amended by adding a new section 60-1.34 to read as follows:

§ 60-1.34 Violation of a conciliation agreement or letter of commitment.

(a) When OFCCP or its representatives alleges that a conciliation agreement has been violated, the following procedures are applicable:

(1) The OFCCP shall send written notice to the contractor setting forth the violations alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which the OFCCP alleges that such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(3) If the contractor is unable to demonstrate that it has not violated its commitments, or if the OFCCP has alleged irreparable injury, the OFCCP may initiate enforcement proceedings immediately without issuing a show cause notice or proceeding through any other requirement contained in this Chapter.

(b) When OFCCP determines that the contractor has violated a letter of commitment, the violation may be corrected through a conciliation agreement or by initiating an enforcement proceeding.

3. Part 60-2 is amended by renumbering the present § 60-2.14, "§ 60-2.15," and by adding a new § 60-2.14 as follows:

§ 60-2.14 Program summary.

The affirmative action program shall be summarized and updated annually. The program summary shall be prepared in a format which shall be prescribed by the Director and published in the FEDERAL REGISTER as a notice before becoming effective. Contractors and subcontractors shall submit the program summary to OFCCP each year on the anniversary date of the affirmative action program.

§ 60-2.15 [Renumbered from § 60-2.14]

4. Part 60-30 is amended by adding a new series of regulations to read as follows:

EXPEDITED HEARING PROCEDURES

§ 60-30.31 Expedited hearings—when appropriate.

Expedited Hearings usually are appropriate when a contractor of subcontractor has violated a conciliation agreement; has not adopted and implemented an acceptable affirmative action program; has refused to give access to or to supply records or other information as required by the equal opportunity clause; has refused to allow an on-site compliance review to be conducted; or whenever the Director determines such hearings to be appropriate.

§ 60-30.32 Administrative complaint and answer.

(a) Expedited hearings shall be commenced by filing an Administrative Complaint in accordance with 41 CFR 60-30.5. The Complaint shall state that the hearing is subject to these expedited hearing procedures.

(b) The Answer shall be filed in accordance with 41 CFR 60-30.6 (a) and (b).

(c) Failure to request a hearing within the 20 days provided by 41 CFR 60-30.6 (a) shall constitute a waiver of hearing, and all the material allegations of fact contained in the Complaint shall be deemed to be admitted. If a hearing is not requested or is waived, within 25 days of the Complaint's filing the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the Complaint, and shall order the appropriate sanctions and/or penalties sought in the Complaint. The Administrative Law Judge's findings and order shall constitute a final Administrative Order, unless the Office of the Solicitor, U.S. Department of Labor, files exceptions to the findings and order within 10 days of receipt thereof. If the Office of the Solicitor, U.S. Department of Labor, files exceptions, the matter shall proceed in accordance with § 60-30.36 of this Part.

(d) If a request for a hearing is received within the 20 days provided by 41 CFR 60-30.6(a), the hearing shall be convened within 45 days of receipt of the request and shall be completed within 15 days thereafter, unless more hearing time is required.

§ 60-30.33 Discovery.

(a) For good cause shown, the Administrative Law Judge may allow the taking of depositions. Other discovery will not be permitted.

(b) Witness lists and hearing exhibits will be exchanged at least 10 days in advance of the hearing.

§ 60-30.34 Conduct of hearing.

(a) At the hearing, the Government shall be given an opportunity to demonstrate the basis for the request for sanctions and/or remedies, and the contractor shall be given an opportunity to show that the violation complained of did not occur and/or that good cause or good faith efforts excuse the alleged violations. Both parties shall be allowed to present evidence and argument and to cross-examine witnesses.

(b) The hearing shall be informal in nature, and the Administrative Law Judge shall not be bound by formal rules of evidence.

§ 60-30.35 Recommended decision after hearing.

Within 15 days after the hearing is concluded, the Administrative Law Judge shall recommend findings, conclusions, and a decision. These recommendations shall be certified, together with the record, to the Secretary for a final Administrative Order. The recommended decision shall be served on all parties and amici to the proceeding.

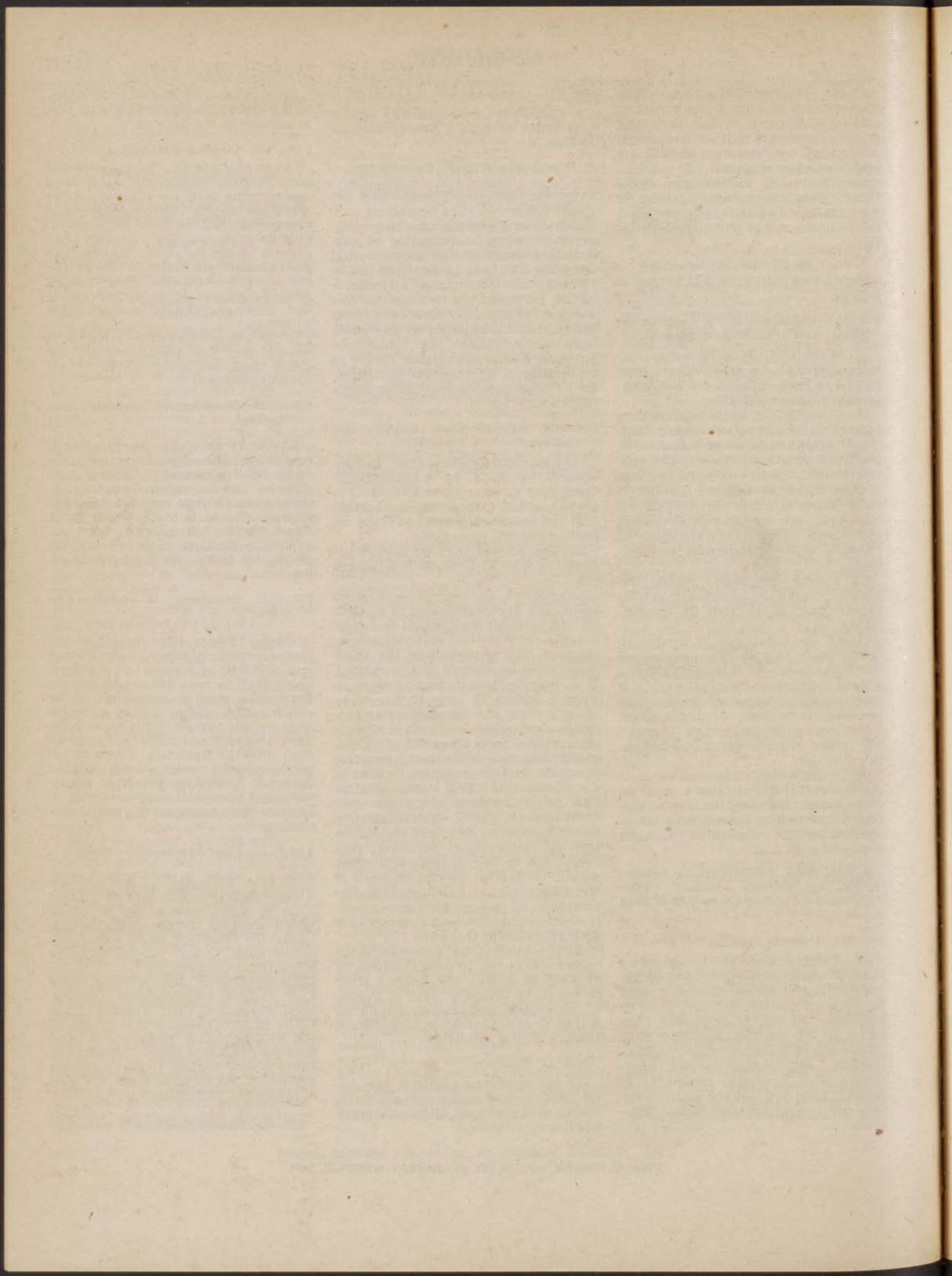
§ 60-30.36 Exceptions to recommendations.

Within 10 days after receipt of the recommended findings, conclusions and decision, any party may submit exceptions to said recommendations. Exceptions may be responded to by other parties within 7 days after receipt by said parties of the exceptions. All exceptions and responses shall be filed with the Secretary. Briefs or exceptions and responses shall be filed with the Secretary. Briefs or exceptions and responses shall be served simultaneously on all parties to the proceeding.

§ 60-30.37 Final Administrative Order.

(a) After expiration of the time for filing exceptions, the Secretary shall issue a final Administrative Order which shall be served on all parties. Unless the Secretary issues a final Administrative Order within 30 days after the expiration of the time for filing exceptions, the Administrative Law Judge's recommended decision shall become a final Administrative Order which shall become effective on the 31st day after expiration of the time for filing exceptions. Except as to specific time periods required in this subsection, 41 CFR 60-30.30 shall be applicable to this subsection.

[FR Doc. 79-8365 Filed 3-19-79; 8:45 am]



Registered
Federal

TUESDAY, MARCH 20, 1979
PART VIII



OFFICE OF
MANAGEMENT AND
BUDGET

BUDGET RESCISSIONS
AND DEFERRALS

Reports

NOTICES

[3110-01-M]

OFFICE OF MANAGEMENT AND
BUDGET

BUDGET RESCISSION

Report

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report a revision to a previously transmitted rescission proposal for the Small Business Administration. This revision decreases the amount previously proposed by \$6.0 million. The details of this revised rescission proposal are contained in the attached report.

THE WHITE HOUSE, March 15, 1979.

[3110-01-C]

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Rescission No.	Item	Budget Authority
R79-11A	Other Independent Agencies: Small Business Administration Salaries and expenses.....	8,665
* * * * *		
SUMMARY OF SPECIAL MESSAGES FOR FY 1979 (in thousands of dollars)		
	<u>Rescissions</u>	<u>Deferrals</u>
Seventh special message: Changes to amounts previously submitted.....	-6,000	---
Effect of seventh special message.....	-6,000	---
Previous special messages.....	914,692	4,098,956
Total amount proposed in special messages.....	908,692	4,093,956 1/
	(in 11 rescis- sion proposals)	(in 52 deferrals)

1/ This amount represents budget authority except for \$15,809,478 in two Treasury Department deferrals of outlays only (D79-40A and D79-25B).

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 95-431

Agency	Small Business Administration	New budget authority (P.L. 95-431)	\$200,000,000
Bureau		Other budgetary resources	
Appropriation title & symbol		Total budgetary resources	200,000,000
Salaries and Expenses 7390100		Amount proposed for rescission	\$ 8,665,000*
OMB identification code: 73-0100-0-1-376		Legal authority (in addition to sec. 1012): ☐ Antideficiency Act	
Grant program ☐ Yes ☒ No		☐ Other	
Type of account or fund: ☒ Annual		Type of budget authority: ☒ Appropriation	
☐ Multiple-year (expiration date)		☐ Contract authority	
☐ No-year		☐ Other	

Justification*

The Departments of State, Justice, Commerce, the Judiciary, and Related Agencies Appropriation Act, 1979 (P.L. 95-431) provided \$200,000,000 for salaries and operational expenses of the Small Business Administration (SBA). This amount was \$34,900,000 in excess of the President's request of \$165,100,000. This proposal is to rescind \$8,665,000 of that additional funding in those areas where funds could not be spent in an efficient and effective manner.

Funds are proposed for rescission which would permit a significant expansion of the small business development center (SBC) program beyond its current pilot stage. The SBA is now undertaking a comprehensive evaluation of its SBC pilot program. Until results of that evaluation are available, it would be premature to provide additional funds for this program.

The rescission proposal also includes reductions in management assistance contracts and other procurement support activities. Both areas will receive significant funding increases in fiscal year 1979, and the amounts to be rescinded would, if retained, place severe strains on the agency's capability to spend funds effectively.

*Revised from previous report.

R79-11A

R79-11A

SUPPLEMENTARY REPORT

Report Pursuant to Sec. 1014(c) of P.L. 93-344

This report updates Rescission No. R79-11 transmitted to the Congress on January 31, 1979, and printed as House Document 96-46.

The requested rescission of \$14,665,000 for the Small Business Administration's salaries and expenses account is hereby reduced by \$6,000,000. The funds resulting from this reduction will be used to cover administrative costs of processing additional SBA disaster loans.

Finally, this proposal includes reductions in administrative expenses for non-essential travel and printing activities in support of the Administration's anti-inflation efforts to hold down Federal spending.

Estimated Effects

This rescission will reduce funding for certain activities in SBA's Salaries and Expenses budget account, but will not significantly impact the agency's essential programs.

Outlay Effect (estimated in millions of dollars) 1/

Comparison with the President's FY 1980 Budget:	
1. Budget outlay estimate for FY 1979.....	185.0
2. Outlay savings included in the Budget outlay estimate.....	14.7

Current outlay estimates for FY 1979:

3. Without rescission.....	199.6
4. With rescission.....	191.0
5. Current outlay savings (line 3 - line 4).....	8.7

Outlay savings for FY 1980..... ---

1/ Detail does not add due to rounding.

* Revised from previous report.

R79-11A

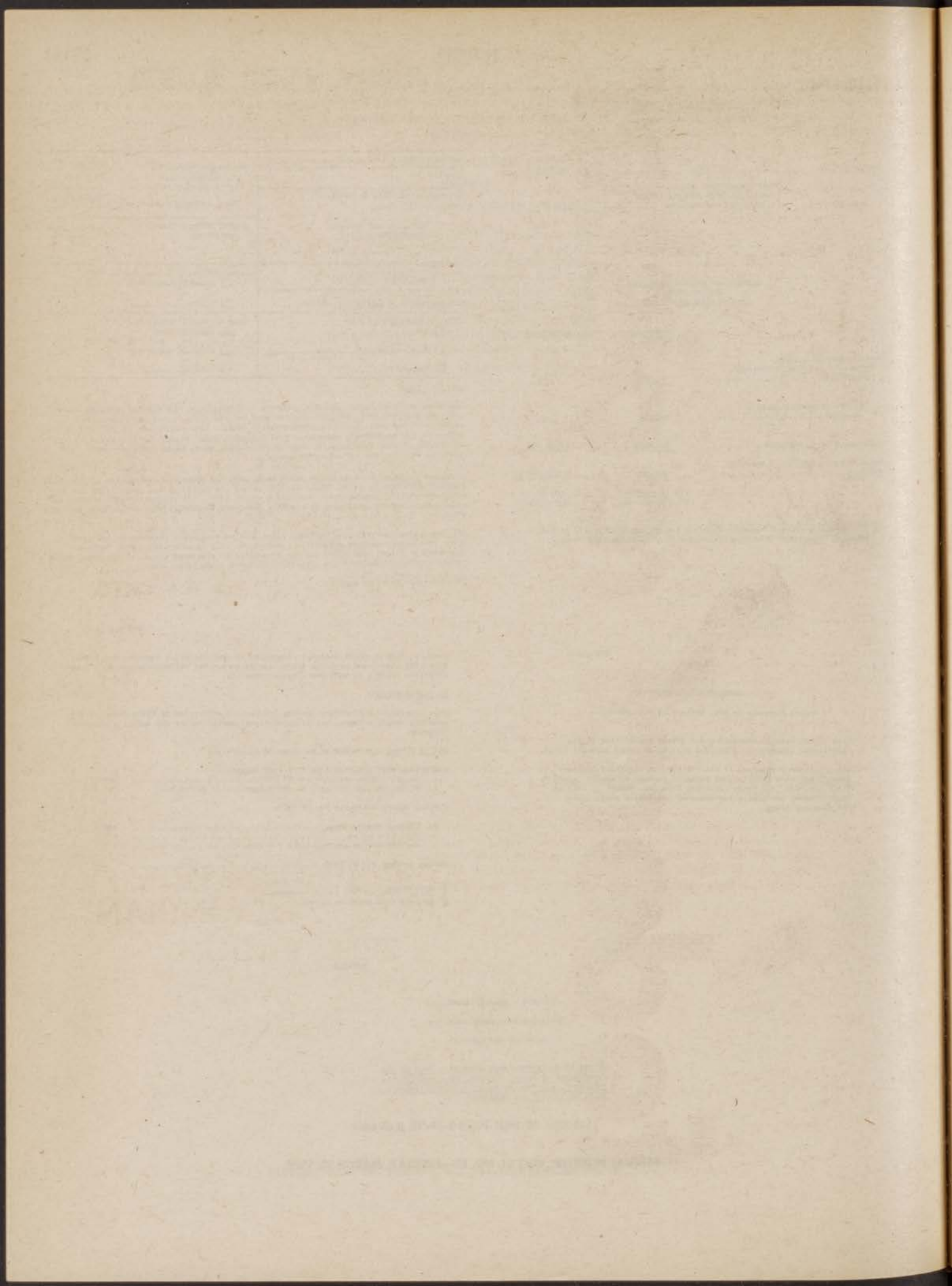
TITLE V - RELATED AGENCIES

Small Business Administration

Salaries and Expenses

Of the funds appropriated under this head in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1979, \$8,665,000 are rescinded.

[FR Doc. 79-8467 Filed 3-19-79; 8:45 am]



Registered
Property

TUESDAY, MARCH 20, 1979
PART IX



**DEPARTMENT OF
THE INTERIOR**

Bureau of Indian Affairs

**INDIAN FISHING—
HOOPA VALLEY INDIAN
RESERVATION**

Final Rule

[4310-02-M]

Title 25—Indians

CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Subpart W—Miscellaneous Activities

PART 258—INDIAN FISHING-HOOPA VALLEY INDIAN RESERVATION

AGENCY: Department of the Interior.

ACTION: Final Rule.

SUMMARY: The Department of the Interior is establishing these conservation regulations to govern Indian fishing on the Hoopa Valley Indian Reservation for the 1979 salmon, steelhead and sturgeon fisheries. These regulations were published as proposed rules on February 14, 1979, 44 FR 9598. The comment period on the proposed rules closed on March 16, 1979. Comments were reviewed and considered in light of the expected low salmon run sizes, and changes were made to the proposed rules where appropriate. Normally tribal governments would be responsible for regulation of Indian fishing on a reservation. Tribal regulation on the Hoopa Valley Indian Reservation has not been possible because the Reservation is shared by two tribes, one of which does not currently have a functioning government. In the absence of a Yurok tribal organization and a mechanism for achieving effective, Reservation-wide self-regulation, the Secretary of the Interior will continue to exercise the Department's responsibilities as trustee to preserve and protect Indian resources, by regulating Indian fishing to allow for the exercise of Indian fishing rights consistent with conservation of the resource.

DATES: This rule becomes effective on April 1, 1979, and continues in effect until rescinded. The regulations published by the Department of the Interior on Thursday, July 13, 1978, and amendments made thereto, are superseded by these regulations and are rescinded as of April 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Joe Weller, Superintendent, Bureau of Indian Affairs, Hoopa Agency, P.O. Box 367, Hoopa, California 95546 (916/625-4285) or

Klamath Field Office, Box 789, Klamath, California 95548 (707/482-6421).

SUPPLEMENTARY INFORMATION: The Department of the Interior is responsible for the supervision and management of Indian Affairs under 43

U.S.C. § 1457, 25 U.S.C. §§ 2 and 9, and the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), including the protection and implementation of federally reserved Indian fishing rights.

These regulations reflect the Department's continuing concern for the protection of the federally reserved fishing rights of Indians of the Hoopa Valley Indian Reservation and for the conservation of the fishery resource for which the fishing rights of these Tribes were reserved. The pertinent historical data for informational purposes relative to the Hoopa Valley Indian Reservation Indian fishery and the extent of Indian fishing rights on the Reservation was published in the *FEDERAL REGISTER*, July 13, 1978, 43 FR 30047-30049. It is incorporated herein by reference and supplemented herewith.

Proposed regulations were published in the *FEDERAL REGISTER* on February 14, 1979, and some thirty documents containing comments were submitted during the comment period. An intensive effort was undertaken to consult with the local Indian communities on these regulations, and the input of the general public was also sought. Meetings and public hearings have been held and written comments have been sought.

Meetings were held on the Reservation on January 19, 1979, and on February 3, 1979, specifically to solicit community views on regulations for 1979. The draft regulations were also discussed at two meetings in Weitchpec on January 10 and January 14. Larger and more formal meetings were held on January 19 at the Mattz Gym at Hoopa and on January 21 at the Ramada Inn in Arcata. Transcripts of these latter two meetings were prepared. A transcript of a third meeting, held February 10 at the Ramada Inn, was also prepared. Public hearings for which transcripts are also available were held on February 24 and March 3, at Humboldt State University, to hear public comment on the proposed regulations published in the *FEDERAL REGISTER* on February 14, 1979. All of these transcripts were reviewed and considered as comments by the drafters of the final rule. A community group mailed to Indians of the Reservation a questionnaire dealing with several issues related to the regulations. The responses to the questionnaire were also considered in drafting the final rule. Approximately twenty-five written comments from individual Indians, non-Indians, community groups, fish or wildlife interest groups, attorneys, and local governmental officials were also received and considered in drafting the final rule. Some of these comments attached additional letters of support for their views from other individuals in the community.

On March 8 and 9, also during the comment period, the Pacific Fishery Management Council (PFMC) met in Eureka, California, to decide the ocean fishing seasons it will propose for adoption by the Secretary of Commerce. This decision is important to the actions of the Department of the Interior, as well as to coastal States and Indian tribes, since the intensity of ocean fishing, combined with the strength of the runs themselves, determines the number of fish which enter coastal rivers and bays and other inside waters for spawning and for other fisheries.

The vast majority of Klamath and Trinity River salmon are harvested in ocean fisheries and, in addition, this year's stocks are lower than normal because of the drought conditions existing during the early phases of their lives. Many Indian and non-Indian comments related offshore fishing to the decline of salmon runs in Reservation waters, and called for further controls to be imposed. Unfortunately, the Department of the Interior has no vote on the PFMC and has no jurisdiction over its actions. Responsibility in this respect rests with the Secretary of Commerce. The Secretary of the Interior nevertheless recognizes the great importance of the offshore fisheries' impact on inside fisheries, including the Indian fishery on the Hoopa Valley Indian Reservation. In response to this concern and to the recommendations of many Indians and others, the Secretary asked the PFMC to reduce the level of offshore fishing this year to assure conservation of the runs and to provide that the ocean fisheries bear their share of the conservation burden, along with the inside fishing groups.

The PFMC did vote for a more restrictive ocean fishing season this year due to the drought-related conservation problems. However, preliminary analysis of the proposed reduction indicates that it will still prevent sufficient escapement into the California rivers for conservation and for in-river fisheries. In fact, it appears that spawning escapement goals will not be met. Unfortunately, this forces an increased conservation burden upon the river fisheries to assure the survival of these fish stocks for future generations' use. Although the PFMC action does not result in as fair an allocation of the conservation burden as we had hoped, our responsibility to assure conservation requires this Department to undertake regulation of the Indian fishery on the Hoopa Valley Indian Reservation in a manner which prohibits commercial fishing in order to reduce the level of fishing pressure for conservation.

Many comments voiced complaints about the sport fishery which exists

on the Reservation. Some claims were made regarding abuse of the fishery by anglers who exceed daily bag and possession limits and who fish for weeks, canning and preserving great quantities of fish in their trailers. Indians are also upset over lack of visible enforcement of these violations. Recommendations were made that sports fishing activities be regulated by the Tribes, or in the absence of a governing body, by the federal government. However, the State exercises jurisdiction over non-Indian sports fishing activities and has agreed to enforce its regulations on the Klamath and Trinity Rivers. In light of this year's conservation problems and the need to restrict Indian commercial fishing, further restrictions on the extent of sport fishing allowed are also being sought.

Many comments recognized that other activities and environmental factors have an impact on the abundance of the fishery resources as well. Comments raised the issues of logging practices, water flows, degradation of stream habitat, and the need for artificial enhancement. The Department recognizes that it has responsibilities in these issues and is reviewing and addressing each of them. However, none of these subjects is a matter for inclusion in these fishing regulations.

It is recognized that artificial enhancement is necessary to improve the size of the fish runs, and the Department is committed to developing appropriate plans for an enhancement project on the Reservation this year. Several enhancement-related projects, sponsored by the Department, Indians, and non-Indian organizations, are already underway. These include a limited fish-rearing program and habitat improvement efforts aimed at increasing the spawning capacity of the River system. A watershed condition inventory, just completed by the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, should help identify future areas for work along these lines. Timber practices along the watershed and the issue of sufficient water flows are also under review by the Department to determine what appropriate steps should be taken to reduce their contribution to the fishery problems. Many individuals and organizations, both Indian and non-Indian, also commented on the need for a comprehensive fishery management program, including both harvest and conservation goals. The Department agrees that this is important, but would prefer to see it addressed by the two Tribes of the Reservation once a mechanism for Reservation-wide joint fishery management has been established.

In commenting on the regulations, many Hoopa and Yurok people objected to specific provisions because they

are to be carried out by the federal government and not by the Indians themselves. They expressed general anger and frustration over the fact that these 1979 fishing regulations are again federal and not Indian regulations. Until a Reservation-wide management and coordination entity can be established, however, it is necessary that the Secretary of the Interior, as trustee for both Tribes, assume management of Reservation assets, including the fishery resource. In other words, in the absence of a mechanism for the Indians of the Reservation to establish a uniform system for Reservation-wide self regulation, the Department must provide the regulatory vehicle and exercise its trust responsibility in the preservation and protection of the resource so that it remains available for the use of Indians of the Reservation in the future.

The formulation of the present regulations was based on the premise that, because the fishery resource belongs to the Hoopa and Yurok people, there must be maximum possible participation by them in this process. A series of community and small group meetings were held throughout the Reservation and interested individuals and groups were encouraged to submit their comments and recommendations. A number of excellent suggestions were made for the management of the fishery resource, including a fish allocation plan called "swap fishing" and the creation of various Indian advisory groups, committees, and councils to carry out different responsibilities under the regulations or to make decisions in respect to them. Among those, a Klamath-Trinity Fisheries Council was recommended "to protect and manage the aboriginal fishing rights and to develop and conduct a Public Information Program." Another suggestion provided for the formation of an Indian Fish Commission "to oversee the fishing and make decisions on regulations." Others referred to specific activities to be carried out under the regulations.

All of the organization ideas suggested in these proposals were given serious consideration in the preparation of the regulations although, for a variety of reasons, they could not be adopted at this time. One problem is that none of these proposals could be implemented in time for the spring or fall chinook runs. Considerably more time would be necessary to determine the acceptability of such a suggestion to the rest of the Hoopa and Yurok communities. More importantly, however, the structure of a Reservation-wide management entity should be determined by the Hoopa and Yurok people themselves and not by the Department through federal regulations. It is expected that serious considera-

tion will be given by the Indian community to the thoughtful proposals submitted during the comment period. Copies of these proposals will be available in the local BIA offices. It is hoped that by 1980, Indians of the Reservation will have reached agreement on the structure of a joint management entity and that the Hoopa Valley and Yurok Tribes will have authorized that entity to regulate and enforce Indian fishing on the Reservation.

Some comments sought to restrict the use of non-Indians for enforcement and biological duties, suggesting that these functions should be directly supervised by the Indian community. Specific mention was made of obtaining tribal enforcement officers and an Indian biologist. As earlier explained, direct Indian control of the fishery can be accomplished only through exercise of tribal rights through some form of representative organized tribal governing body. The Department is nevertheless committed to providing additional technical fisheries services to the Indian community, and is currently reviewing the matter to determine the best way to fund and implement these services. Three Indian Enforcement officers—working under the overall direction of the BIA Agency Superintendent, have also already been hired and trained to carry out law enforcement activities related to these regulations on the Reservation.

In response to some suggestions from comments on definitions under the regulations, new language defining "gillnet" was adopted. A suggestion that the sale of fish be specifically prohibited was also adopted as a change. However, it was felt that suggestions to modify definitions to lessen the restrictions on identification cards, identification numbers, gear and use of fish would render the regulations ineffective for conservation purposes as well as unenforceable, and consequently these suggestions were not accepted.

A number of objections were made to the requirement that Indian fishermen have identification cards, arguing that it infringes on their rights. However, the purpose of such cards is not to regulate the Indian fisherman but to prevent non-Indians from infringing on the reserved rights of the Indians. It is unfortunate that, in order for this system to work, penalties must be imposed on those Indian fishermen who do not cooperate. Other tribes with reserved hunting and fishing rights have found that the use of fishers identification cards is the only feasible way of distinguishing between those who do and those who do not have the right to exercise these reserved rights. It is hoped that when a Reservation-wide management entity

is formed, it will carry out the issuance of fishers identification cards, rather than the BIA.

A number of Indian fishers suggested that subsistence and commercial fishing should not be differentiated and further suggested that commercial fishing is simply a form of subsistence in that it is a means of obtaining the necessities of life. It is recognized that the right to fish commercially does exist and may be exercised at such time in the future when the fish runs can withstand the increased harvest. These rights will not be modified or extinguished by these regulations. A moratorium on commercial fishing is necessary at this time because the 1979 runs will not be large enough to sustain commercial fishing in addition to providing for consumptive fishing and escapement needs. Based on the public meetings and individual statements, it is believed that the majority of the Indians on the Reservation place a priority on subsistence over commercial fishing and favor a moratorium on commercial fishing in order to meet subsistence fishing and spawning escapement needs.

Several Indians of the Reservation have recommended that the restrictions pertaining to steelhead and sturgeon not be included in the regulations. Available biological data show that steelhead runs in the Klamath River system are substantially depressed from former years and virtually no data is available with regard to sturgeon runs. Steelhead and sturgeon are covered by the regulations to protect the stocks and to obtain data on their condition. Subsistence fishing for steelhead and sturgeon is permitted under these regulations.

Comments received from a number of eligible fishers indicate a desire to use more than one set-net at any given time and a desire to combine two or more small nets so as to form larger nets. This recommendation was reviewed in light of the anticipated conservation problems for its potential adverse impact on spawning escapement when compared to the proposal to allow only one net. It was determined that, by limiting the total combined length of two nets utilized for fishing to a maximum of 100 feet, and by providing that no more than two nets can be utilized at any one time, the impact would be approximately the same as that of one 100 foot net and yet would provide the flexibility desired by many Indians. Accordingly, the regulations were changed to respond to the concerns raised in these comments.

Comments of several Indians of the Reservation recommended changing the provision that required them to remove their nets from the water on a daily basis between the hours of 8 a.m. to noon, noting that such a restriction

would prevent them from setting nets before going to work and removing them when they returned from work. Upon review, that provision was changed to require that nets be out of the water during the period of noon to 4 p.m. on each Monday. As a general rule, fishers remove fish from their nets on a regular basis. During the fall chinook fishery the heavy algae concentrations in the Rivers ensure that Indians remove and clean their nets on a daily basis so as to maintain their effectiveness in catching fish. Weekly checks provided under these rules respond to the concerns raised and will still assure that waste is prevented.

Despite a number of comments received from eligible fishers supporting the practice of drift-net fishing, a provision prohibiting such fishing below the Highway 101 bridge was adopted because of the need to reduce fishing effort on the River for conservation. However, the final regulations were drafted to allow drift-net fishing above the bridge, responding to the concerns raised to the extent possible within the limits of this year's conservation problem. A small number of drift-net fishers fishing below the Highway 101 bridge in the calm estuary area have the potential for harvesting many more fish from the Klamath River than the large number of set-net and drift-net fishers above the bridge. If drift-net fishing were allowed below the Highway 101 bridge, the harvest would probably be so great that all fisheries would have to be severely cut back to provide for adequate spawning escapement. Drift-nets fished above the Highway 101 bridge do not have a significantly different capability for taking fish than do set-nets. Therefore, drift-net fishing will be allowed above the Highway 101 bridge on the same basis as set-net fishing.

A number of comments were received suggesting that a mesh size restriction be included in the regulations to protect steelhead trout. However, it is not the intention of the Department to prohibit the taking of steelhead trout by Indians of the Reservation for subsistence purposes. It is also believed that, considering the other restrictions on netting contained in these regulations and the relatively low interest in steelhead on the part of most Indians of the Reservation, the addition of a mesh size requirement would not result in a significantly reduced net harvest of steelhead.

A number of comments questioned the requirement for marking fish taken off the Reservation. For religious reasons some fishers regard the removal of the top half of the tail fin as improper mutilation of the fish. In response to this concern this section was modified to authorize the marking of the tail of the fish with an "X" in

indelible ink as an alternative to removal of the top half of the tail fin. Ink for this purpose will be available at BIA and U.S. Fish and Wildlife Service offices on the Reservation. The marking requirement itself remains, however. The purpose of this provision is to help curb the illegal sale of fish. There is reason to believe that some of the subsistence fish taken by eligible fishers have been unlawfully sold. Fish brokers, wholesalers, dealers, etc., are being advised that fish marked with the indelible dye or by the clipped tail fin cannot be bought or sold, and that they will be prosecuted under the appropriate state or federal laws if they are caught with such fish in their possession. By including this provision in the regulations, the probability of fish buyers purchasing subsistence-caught fish is likely to be much reduced. At the same time, if eligible fishers desire to transport fish off the Reservation to consume them, they may legally do so simply by marking the tail as provided under these regulations.

In comments on the consultation process under these regulations it was suggested that the BIA Superintendent should hold weekly, rather than bi-weekly meetings, rotating among Klamath, Hoopa, and Pecwan during the fishing season. Unfortunately, it is not possible for the Superintendent to hold meetings on a weekly basis because he has many other administrative responsibilities, not only for the Hoopa Valley Reservation, but for the newly recognized Karok Tribe as well. The Superintendent could nevertheless be requested to hold a special meeting in an emergency situation. Also, there were some suggested additions to the list of posting locations for the notices of in-season adjustments. Rather than attempt to include all possible locations in these regulations, provision will be made to expand the list on an informal basis, as necessary.

A number of comments said that net harvest data should be collected by an Indian biologist instead of by the U.S. Fish and Wildlife Service. The comments would have the Fish and Wildlife Service work with an Indian biologist to compile the data and to analyze it. However, an Indian biologist is not currently available. Therefore, net harvest data will be collected by a number of census-takers working under the supervision of the Fish and Wildlife Service and the Bureau of Indian Affairs. Every effort will be made to recruit Indians to carry out this activity. Sport harvest monitoring activities will also be conducted, as a cooperative effort involving agencies of the Department of the Interior, possibly including the census-takers, and by the State.

Several comments addressed the law enforcement effort. The majority of these comments recommended that only Indians enforce the regulations, expressing the thought that Indian enforcement officers would better understand local customs and traditional methods and would be better able to deal with any problems that arise. Some comments requested that enforcement be consistent and fair and as strong as necessary to protect the resource. Other comments alluded to the use of "SWAT teams" and complained that excessive force and weapons were used last year. During the 1979 fishing seasons the basic enforcement level on the Reservation will consist of a small trained force of Indian officers with minimal support from other sources. To be successful in promoting conservation by ensuring compliance with these regulations, these officers will need the cooperation and support of the community.

The majority of comments received on law enforcement spoke to the issue of seizures of fishing gear and fish. Some of these comments asserted that unconstitutional seizures and confiscations were authorized. The regulations do not authorize any police action in a manner that violates constitutional or civil rights. However, they do provide for lawful seizure for evidentiary purposes of fishing gear and fish by an enforcement officer. All items so seized are to be held until the Court of Indian Offenses makes a determination concerning return or forfeiture of the property. All items forfeited by the court will be disposed of as directed by the Secretary. Under the regulations, when unattended nets or other fishing gear are seized, notices must be posted and published in local news media to alert affected persons to the seizure and disposition of fish, nets or other fishing gear.

Many comments complained that the maximum penalties imposed for violation of the regulations were too severe. Some expressed the view that the penalties under these regulations are more severe than those which apply to non-Indians under state laws. However, the decision was made to retain criminal penalties in the final regulations to ensure an effective deterrent to violation of the regulations. Also, a major problem with the civil penalties that applied under last year's regulations was the lack of arrest power, where effective action could not be taken against fishers who refused to identify themselves. The use of criminal penalties will also correct this problem. Maximum penalties proposed in the February 14, 1979, FEDERAL REGISTER publication were substantially reduced from earlier proposals. They have not been reduced further in the final regulations, how-

ever. The penalties provided under these regulations are now no more severe and, in many cases are less severe, than the corresponding penalties under state law. See Cal. Fish & Game Code, §§ 12000 and 12001. Unlike the regulations last year and unlike many offenses under state fish and game law, the court is not required to impose minimum penalties. The penalties listed in the regulations are also well within the range prescribed for petty offenses under federal law. See 18 U.S.C. § 1. Just as state courts rarely impose the maximum possible sentence for fishing violations, it is anticipated that the Court of Indian Offenses will continue to impose lesser penalties than the maximum allowed in most cases. It is expected that fines and suspension of fishing rights for short periods of time during the fishing season will continue to be the type of penalty most frequently imposed.

Converting the penalties from civil to criminal will also give defendants additional rights. The prosecution will have to prove its case "beyond a reasonable doubt" and legal counsel could be provided at no expense to persons who cannot themselves afford to hire private defense counsel and who cannot otherwise obtain the assistance of an attorney.

Some comments objected to the possibility of subjecting children to jail sentences. In response to this a change was made to provide that children ten years of age or younger are not subject to these regulations. However, any adult accompanying that child would be held responsible for any violations committed by the child, and could be prosecuted as if he or she committed the violation. Persons over ten years of age are still subject to the general penalties provided under these regulations. However, another change was made here to specifically authorize the court to require children over ten and adults to work up to twenty hours a week without pay in habitat and enhancement work along the Rivers. The number of weeks they would work would correspond to the number of weeks they might have been jailed. This will allow the court to avoid jail sentences, where appropriate, for older children as well as adults. Work times would, of course, be arranged so as not to interfere with school attendance.

Some comments expressed confusion about what a "lawful order of the court" might be. This provision is designed to provide explicit authority for the court to exercise the contempt power that courts inherently possess. It is available to assure that jurors, defendants, and witnesses appear when they are ordered to do so by the court. Disorderly conduct in the courtroom and failure or refusal to comply with a

judgment of the court could also be punished under this provision.

Other comments expressed difficulty in determining which penalties applied to which violations. The regulations have been clarified in this respect by stating in each case which section of the regulations is covered by which penalty.

One comment recommended the assessment of heavy fines against fish buyers or dealers. We agree that penalties for fish dealers need to be particularly stringent because their actions have the greatest potential for encouraging abuse of fishing privileges, leading to damage to the fish stocks. Additionally, heavy penalties are needed to counteract the profits that can be made by violating the law. For those persons subject to the jurisdiction of the Court of Indian Offenses, the maximum penalty allowable under the Indian Civil Rights Act may be imposed on persons selling fish. Federal law enforcement officers will make a vigorous effort to apprehend others illegally selling fish caught on the Reservation and press for their prosecution under applicable state or federal law.

Several comments recommended that all judges be Indians. Only one of the five judges is a non-Indian but he is currently handling all trial work and, as chief judge, is serving as administrator for the court. The Department has so far been unable to find an Indian with the necessary skills who is willing to assume those responsibilities. For that reason, the requirement in 25 CFR § 11.3(d) that all judges be tribal members was waived by the assistant Secretary—Indian Affairs at the time the court was established. The chief judge has informed us, however, that one of the associate judges, an Indian, may also be prepared to conduct a trial in the near future.

One comment recommended that judges be elected. Such a procedure could not be implemented until it becomes clear who could vote. Another comment recommended that the court be replaced with a tribal court of the Hoopa Valley Tribe. Such a court would not be able to exercise jurisdiction over the many Indians of the Reservation who are not members of the Hoopa Valley Tribe. Comments also expressed fear that a judge might be removed by the BIA simply because that judge ruled in favor of Indians. However, that cannot occur since 25 CFR § 11.4 provides that judges may be removed only for cause. Under the Indian Civil Rights Act and the U.S. Constitution, displeasure with the decision of a judge is not a permissible cause for removal.

Other comments objected to the fact that the court is not permitted to determine the validity of the regulations

themselves. This limitation is retained because the federal courts are the proper forum for review of the validity of the regulations. The court is, however, responsible for assuring that it exercises its authority under the regulations in a manner that complies with the U.S. Constitution and the Indian Civil Rights Act. The court also has the power and duty to control the use of its authority by law enforcement officials by ordering the return of property seized in violation of Constitutional guarantees. Basic court procedures for the Court of Indian Offenses are found in 25 C.F.R. §§11.1-11.26 and 11.33-11.37. With the exception of the requirements involving tribal councils (because there is no Yurok Tribal Council) and the provision for four years of tenure (because the court is not expected to exist for that long), those procedures govern the court on the Hoopa Valley Indian Reservation.

In late January, 1979, the Department concluded its environmental assessment under the National Environmental Policy Act of 1969. Upon review of that assessment it has been concluded that the proposed regulation of this on-reservation Indian fishery is not a major federal action which would significantly affect the environment within Section 102(2)(c) of the Act. Accordingly, the preparation of an environmental impact statement is not required. The assessment is available for review at the Sacramento Area Office of the Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825 (916/484-4682). The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

These rules become effective only 12 days after they are published in the FEDERAL REGISTER although 30 days is normally allowed between publication and the effective date. This is necessary in order to have new fishing rules in effect in time to govern Indian fishing during the spring salmon run. The 1978 regulations, which these rules supersede, would have permitted some commercial fishing after April 1, 1979. Since the number of salmon entering the River is expected to be very small because of drought conditions and other problems during the early lives of salmon in this year's run, it is necessary to publish new rules prohibiting commercial fishing for conservation, to assure sufficient spawning escapement to perpetuate the run. Publication in the FEDERAL REGISTER was delayed in order to permit Indians and others affected by the rules as much time as possible to discuss and consider them and to provide their views and recommendations to the Department. The Department also felt it needed to

consider the potential impact of the recommendations for ocean fishing voted on March 9, 1979, by the Pacific Fishery Management Council. Dissemination of information regarding these rules will be accomplished in as speedy and thorough a fashion as possible through Fish and Wildlife Service and Bureau of Indian Affairs field offices in the vicinity of the Reservation. These efforts include mailings to Indians of the Reservation for whom addresses are available and publication through local news media, in an effort to provide adequate and timely notice to those affected by the final rules. Under these circumstances, the Department finds there is good cause and that it is in the public interest to make these regulations effective less than 30 days after publication in the FEDERAL REGISTER.

The primary authors of this document are William Finale, Director, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825 (916/484-4682); and Joe Weller, Superintendent, Bureau of Indian Affairs, Hoopa Agency, P.O. Box 367, Hoopa, California 95546 (916/625-4285).

Date: March 19, 1979.

JAMES A. JOSEPH,
Under Secretary,
Department of the Interior.

Chapter 1 of Title 25 CFR is amended by revising Part 258.

PART 258—INDIAN FISHING — HOOPA VALLEY INDIAN RESERVATION

- Sec.
- 258.1 Purpose
 - 258.2 Term of Regulation
 - 258.3 Application
 - 258.4 Definitions
 - 258.5 Eligible Fisher—Eligible Indian
 - 258.6 Fishers Identification Cards Required
 - 258.7 Identification of Gear
 - 258.8 Permissible and Prohibited Fishing
 - 258.9 Catch Marking
 - 258.10 Consultation
 - 258.11 In-season and Emergency Regulations
 - 258.12 Fish Catch Reporting
 - 258.13 Identification of Persons Fishing
 - 258.14 Enforcement
 - 258.15 Penalties
 - 258.16 Forceable Assault and Impeding a Law Enforcement Officer
 - 258.17 Hoopa Valley Indian Reservation Court of Indian Offenses

AUTHORITY: 43 U.S.C. § 1457, 25 U.S.C. § 2 and § 9, 25 U.S.C. § 262, and the Reorganization Plan No. 3 of 1950 (65 Stat. 1262).

§ 258.1 Purpose.

(a) The regulations contained in this Part govern fishing by eligible Indians on the Hoopa Valley Indian Reservation. The purpose of these regulations is to protect the fishery resources and to establish procedures for the exer-

cise of the fishing rights of Indians of the Reservation until a Reservation-wide management mechanism is established with the capability to manage and regulate the Indian fisheries on the Reservation. These regulations are intended to promote reasonably equal access to the fishery resources of the Reservation by all Indians of the Reservation, and to assure adequate spawning escapement.

(b) The limited extent to which regulation is undertaken by this Part is not intended nor should it be construed as a conclusion that the Secretary does not have the authority to take additional measures to protect fishery resources on the Reservation if it is later determined that such measures are necessary.

§ 258.2 Term of regulation.

These regulations become effective on April 1, 1979 and continue in effect until rescinded. The regulations published by the Department of the Interior on Thursday, July 13, 1978, and amendments thereto, are superseded by these regulations and are rescinded as of April 1, 1979.

§ 258.3 Application:

(a) The provisions of these regulations and all in-season adjustment orders issued under them apply to the waters of the Klamath and Trinity Rivers and their tributaries within the exterior boundaries of the Hoopa Valley Indian Reservation.

(b) Any person who is not an Indian of the Reservation as determined under § 258.5 of this Part is not regulated under this Part at this time and must therefore comply with all other applicable laws when fishing on the Hoopa Valley Indian Reservation.

(c) Children 10 years of age and under shall not be subject to these regulations. However, adults in the company of such children shall be held liable for the compliance with these regulations by such children.

§ 258.4 Definitions:

(a) *Channel means:* the wetted area from bank to bank.

(b) *Commercial fishing means:* the taking of fish or fish parts with the intent to sell or trade them or profit economically from them.

(c) *Consumptive or subsistence fishing means:* the taking of fish to be eaten by Indians of the Reservation or their immediate families.

(d) *Drift net (pole net) means:* a gill-net which is not staked, anchored or weighted, but drifts free.

(e) *Eligible Fisher—Eligible Indian means:* any Indian who is determined to be an Indian of the Reservation under § 258.5 of this Part.

(f) *Enforcement Officer means:*

(1) Any enforcement officer of the Department of the Interior;

(2) Any U.S. Marshall;

(3) Any tribal enforcement officer;

(4) Any person deputized to enforce these regulations.

(g) *Fish, fishing means:* the fishing for, catching, or taking or the attempted fishing for, catching, or taking of any salmon, steelhead or sturgeon within the exterior boundaries of the Reservation.

(h) *Fishers identification card means:* the identification card issued by the Bureau of Indian Affairs identifying the holder as a person eligible to fish as an Indian of the Reservation. The identification card shall include the name, basis for eligibility to fish, address, birthdate, color of hair, color of eyes, height, weight, identification number of the holder, the holder's photograph, and the disclaimer provided in Section 258.5.

(i) *Fishing gear means:* any boat, motor, gillnet, seine, hook-and-line, and other apparatus used for taking fish.

(j) *Identification number means:* the identification number assigned by the Bureau of Indian Affairs identifying the eligible fisher by number. This number is to be obtained by the eligible fisher and placed on his or her fishing gear where required by these regulations.

(k) *Gillnet means:* a flat net suspended vertically in the water with meshes that allow the head of a fish to pass but entangle the fish when it seeks to withdraw.

(l) *Hand dip net means:* a section of netting distended by a rigid frame operated by a process commonly recognized as dipping. Such nets may be of any size.

(m) *Reservation means:* the Hoopa Valley Indian Reservation as extended, including those parts known as the "Extension" and the "Hoopa Square."

(n) *Secretary means:* Secretary of the Interior or his designated representative.

(o) *Set-net means:* A gillnet which is staked or anchored or weighted at each end so that it does not drift free.

(p) *State enforcement officer means:* any official of the State of California who is authorized to enforce state fish and game laws.

(q) *Stretched measure means:* the distance between the inside of one knot and the outside of the opposite (vertical) knot on one mesh of a gillnet. Measurement shall be taken when the mesh is stretched vertically while wet, by using a tension of ten (10) pounds on any three (3) consecutive meshes, then measuring the middle mesh of the three while under tension.

(r) *Subsistence or consumptive fishing means:* the taking of fish to be

eaten by Indians of the Reservation or their immediate families.

§ 258.5 Eligible Fisher—Eligible Indian:

(a) Enrolled members of the Hoopa Valley Tribe or plaintiffs in the case entitled *Jessie Short et al. v. United States*, Ct. Cls. No. 102-63, may exercise fishing rights under the authority of this Part. Also, persons who are allottees or direct descendants of allottees on the Hoopa Valley Indian Reservation, who currently and for eight (8) of the past ten (10) years have resided on the Reservation or within 60 miles thereof are eligible to exercise Indian fishing rights within the Reservation boundaries. Such persons are eligible fishers for the purposes of these regulations only.

(b) Disclaimer: Determination of eligibility to fish under paragraph (a) of this section shall not be considered evidence of entitlement or lack of entitlement or in any way affect eligibility for enrollment or other tribal benefits or rights on the Hoopa Valley Indian Reservation.

(c) An eligible Indian as determined under paragraph (a) of this section who allows an ineligible person to assist in an Indian fishery on the Reservation shall be subject to the penalties set out in § 258.15(a).

§ 258.6 Fishers identification cards required:

(a) Persons qualifying as an "Eligible Fisher" or "Eligible Indian" under § 258.5 shall obtain an Indian fishers identification card and have it in his or her possession before exercising any Indian fishing rights or transporting fish caught in the exercise of Indian fishing rights on the Reservation.

(b) Penalties: Eligible Indian fishers who do not have their identification card in their possession while fishing or transporting fish may be presumed to be ineligible to exercise fishing rights as an Indian of the Reservation and, therefore, subject to all other applicable laws. In the event such an Indian subsequently shows proof of eligibility, he or she shall be subject to the penalties prescribed in § 258.15 for the failure to have an identification card in his or her possession.

(c) Fishers Identification Card: A fishers identification card shall be issued by the Bureau of Indian Affairs Hoopa Agency to applicants who fulfill eligibility requirements stated in § 258.5(a). The card shall show the name, basis for eligibility to fish, address, birthdate, color of hair, color of eyes, height, weight, identification number, and holder's photograph, and it shall note the disclaimer stated in § 258.5(b). Such cards may be obtained by contacting the Agency Superintendent, P.O. Box 367, Hoopa, Califor-

nia, 95546 (916/625-4285). The card shall be signed by the card holder. The card shall be countersigned by the authorized official of the Bureau of Indian Affairs certifying that the card holder is recognized as eligible to exercise Indian fishing rights on the Reservation.

§ 258.7 Identification of gear.

(a) At the time an eligible fisher applies for a fishers identification card he or she shall be assigned an identification number and shall be required to place the identification number on all of his or her nets used for fishing in the exercise of Indian fishing rights on the Reservation. Each net shall be marked on the first front, middle, and last end cork of each net used by each eligible fisher. Each net must have floats or corks attached which shall be floating and visible at all times.

(b) All fishing nets shall be conspicuously marked so that the fisher's identification number may be read without removing the gear from the water. In the absence of proof to the contrary, unmarked fishing nets shall be presumed not to be used in the exercise of the fishing rights of Indians of the Reservation and will be subject to seizure by a law enforcement officer.

§ 258.8 Permissible and Prohibited Fishing:

(a) The Hoopa Valley Indian Reservation is open to the taking of salmon, steelhead and sturgeon by eligible Indians for subsistence and ceremonial purposes unless specifically closed by these regulations or by properly adopted in-season and emergency regulations promulgated hereafter. Fishing shall be permitted seven days per week and 24 hours per day except that all nets must be out of the water between the hours of noon and 4:00 p.m. on Monday of each week.

(b) Fishing is permitted under these regulations for subsistence and ceremonial purposes only.

(c) Commercial fishing is prohibited by these regulations.

(d) Fish caught on the Hoopa Valley Indian Reservation may not be sold.

(e) Restrictions on fishing:

(1) Drift-net fishing shall not be permitted below the Highway 101 Bridge.

(2) No eligible fisher may use more than two gillnets, the combined length of which shall not exceed one hundred (100) feet.

(3) Set-nets or drift-nets may be joined end-to-end so as to form a single straight-line net as long as the new length does not exceed 100 feet.

(4) Both ends of a set-net shall be anchored or staked at all times it is in use.

(5) No set-net may be placed in the Klamath River or Trinity River in such a way that it covers more than

one-third (1/3) of the distance across the wetted area of any channel.

(6) No set-nets may be placed within twenty (20) feet of the mouth or across the mouth of any tributary stream of either the Klamath or Trinity Rivers. No set-nets may be placed in any tributary stream of either the Klamath or the Trinity River.

(7) No set-nets may be placed within five hundred (500) feet in any direction of the confluence of the Klamath and Trinity Rivers.

(8) The use of wire, fencing materials, traps, snag gear, explosives, stunning agents or caustic or lethal chemicals in any form is expressly prohibited in all fisheries.

(f) *Set-net Locations:* Set-net locations shall be determined by the individual Indian fishers in accordance with tradition and custom and in a manner consistent with the provisions of this Section 258.8. Disputes over set-net locations are to be resolved between the parties. If no satisfactory resolution is reached then all disputes are to be referred by the parties to elders or knowledgeable adults of the community for the particular area in which the unresolved dispute takes place.

(g) *Dip-Net and Hook-and-Line Fishing:* Eligible Indians may engage in dip-net fishing or hook-and-line fishing at all times on the Reservation except when fishing is prohibited for all persons by emergency regulations promulgated hereafter for conservation purposes. Fishers' identification cards shall be carried by all eligible Indians when engaged in dip-net or hook-and-line fishing.

(h) *Special Fishing for Rest Home on Hoopa Square:* Two gillnets which are used in conformity with these regulations may be used for fishing for the Rest Home on the Hoopa Square. Such gillnets shall be clearly marked with a number assigned by the BIA Agency Office at Hoopa upon registration of the nets. An eligible Indian of the Reservation shall tend these nets.

(i) *Research and Test Fisheries:* Fish capture techniques including trapping, netting and electrofishing may be employed by biologists of fisheries management agencies working on the Rivers for biological research, enhancement or other resource management purposes. Designated Indians of the Reservation may observe research and test fisheries upon making arrangements with the agency conducting the research activity.

§ 258.9 Catch Marking.

All fish transported outside of the exterior boundaries of the Reservation shall be clearly marked on the tail by an "X" in indelible dye or by clipping or cutting off the top half of the tail fin. The bottom half of the tail fin

may not be removed until the fish have arrived at the location where they are to be consumed or preserved for consumption.

§ 258.10 Consultation.

The BIA Agency Superintendent or his designated representative shall generally hold meetings every other week during the fishing seasons, rotating among Klamath, Hoopa and Pecwan, to consult with Indians of the Reservation on the status of the fishery, ocean harvests, the sport fishery, Indian harvests, and such specifics as proposed in-season adjustments to the regulations, as appropriate. At the end of each presentation, comments will be received from those in attendance. A written summary of those comments shall be maintained as a record by the Agency Superintendent or his designated representative.

§ 258.11 In-Season and Emergency Regulations.

(a) The Director of the U.S. Fish and Wildlife Service or his specifically authorized delegate is authorized to make in-season and emergency changes to the regulations when necessary to ensure proper management of the fisheries of the Klamath and Trinity Rivers. This authority includes the following powers:

(1) To close all or part of an Indian fishery when, in the Director's judgment, a closure is necessary to meet conservation needs.

(2) To re-open all or part of an Indian fishery when, in the Director's judgment that action will not jeopardize spawning escapement.

(b) In-season or emergency regulations shall be effective 24 hours after publication in the *Eureka Times Standard*. They shall stay in effect until modified or rescinded by the Director. Failure to complete subsequent provisions of this section shall not affect the validity of any in-season or emergency adjustment.

(c) *Notification of in-season or emergency adjustments:* (1) The Superintendent of the Hoopa Agency shall be responsible for having each emergency or in-season adjustment to the fishing regulations published in the *Eureka Times Standard* as a legal notice at least twenty-four (24) hours before it is to become effective, and in the *Del Norte Tri-County Klamath Courier*, and the *Arcata Union* as promptly as possible.

(2) The BIA Area Director shall have each in-season adjustment or emergency regulations published in the *FEDERAL REGISTER* as promptly as possible.

(3) The Superintendent of the Hoopa Agency shall attempt to post each emergency or in-season adjustment at least twenty-four (24) hours

before it is to become effective at each of the following locations:

- (i) Hoopa Post Office.
- (ii) Hoopa Shopping Center.
- (iii) Hoopa Agency, Bureau of Indian Affairs.
- (iv) Willow Creek Post Office.
- (v) Willow Creek Public Library.
- (vi) Weitchpec Bulletin Board, Pier-son's Store.
- (vii) Weitchpec Elementary School.
- (viii) Pecwan Church.
- (ix) Pecwan Elementary School.
- (x) Requa Community Center.
- (xi) Resighini Rancheria Office.
- (xii) Klamath Post Office.
- (xiii) Requa Inn.
- (xiv) U.S. Coast Guard Station, Requa.
- (xv) Klamath Grocery Store.
- (xvi) Klamath Field Office, Bureau of Indian Affairs.
- (xvii) Bureau of Indian Affairs, Eureka.
- (xviii) Bureau of Indian Affairs, Redding.

(4) If the owners of the property at the following locations so desire, a courtesy copy of the notice will be provided:

- (i) Hoopa Tribal Office.
- (ii) Young's Bar.
- (iii) Dad's Camp.
- (iv) Chub's Camp.
- (v) Gensaw's Landing.
- (vi) Notchkeo.
- (vii) Terwar.
- (viii) Bacon's Camp.
- (ix) Sim's Camp.
- (x) Mattz's Dock.
- (xi) Others that may so request.

§ 258.12 Fish catch reporting.

(a) All fishers shall allow access to harvested fish to biologists, enforcement officers and Indian trainees for the purpose of monitoring the harvest and to check for compliance with these regulations.

(b) Fish catch data shall be compiled and summarized by the U.S. Fish and Wildlife Service and made available upon request. It will not be permissible to release catch information for individual fishers of the Reservation.

(c) U.S. Fish and Wildlife Service will compile in-season catch data from information obtained from fishers spot checks, landing counts, creel census, and from other information collected by state and federal officials.

§ 258.13 Identification of persons fishing.

Each eligible fisher shall produce for examination the applicable Indian fishers identification card required under these regulations upon demand of an enforcement officer.

§ 258.14 Enforcement.

Eligible Indians who violate these regulations or any in-season or emergency adjustment promulgated under

these regulations shall be subject to prosecution before the Court of Indian Offenses for the Hoopa Valley Indian Reservation. The pertinent provisions of 25 CFR Part 11 and the Indian Civil Rights Act of 1968 apply.

(a) *Citations:* Law enforcement officers may issue citations to any eligible Indian the officer believes has committed a violation of the regulations of this Part. Such citation shall state when and where the person cited is expected to appear in court and the offense with which the person is charged.

(b) *Seizure: Confiscation of Fishing Gear and Fish:* (1) Any net or other fishing gear used in violation of these regulations and any fish caught or possessed in violation of these regulations may be seized by a law enforcement officer.

(2) When a net or other fishing gear is seized and the owner is not present or is unknown to the enforcement officer, the officer shall, without unreasonable delay, commence proceedings in the Court of Indian Offenses by petitioning the Court for a judgment forfeiting the fishing gear or fish.

(3) Upon the filing of such petition, the clerk of the Court shall set out details of the seizure citing time, place and location of such seizure and fix a time for a hearing and cause notices for unattended gear or fish to be posted and published.

Notices shall be posted for fourteen (14) days at both courthouses of the Court of Indian Offenses and the del Norte County Court house and be published in local news media having circulations on the Reservation for a period of five (5) days. Notices will set forth the substance of the petition and the time and place of such seizure and hearing.

(4) Any fishing gear or fish ordered forfeited shall be disposed of as directed by the Secretary.

(5) Any person who satisfies the court that he or she is the owner of any fishing gear or fish seized under this section may intervene in the forfeiture proceeding on behalf of the fishing gear or fish.

(c) *Arrests:* (1) (i) Each judge of the Court of Indian Offenses is authorized to issue warrants for the arrest of an eligible Indian.

(ii) No arrest warrant may be issued except upon a written affidavit based upon reliable information or belief alleging that there is probable cause to believe that the person to be arrested has violated the regulations of this Part.

(2) A law enforcement officer may arrest any individual without a warrant if that officer has probable cause to believe that person is committing a violation of the regulations of this Part in the officer's presence.

(3) Any eligible Indian charged with a violation of the regulations of this Part may be admitted to bail in an amount set by the Court of Indian Offenses. The Court may release a prisoner on his or her own recognizance in an appropriate case.

§ 258.15 Penalties.

(a) Any eligible Indian who violates §§ 258.3(c), 258.5(c), 258.8 (a), (e), or (g), 258.11 (a) or (b) of this Part shall be subject to the following penalties:

(1) *1st Violation of the Regulations of this Part.* No more than \$200 or two (2) months in jail or suffer suspension of tribal fishing rights for thirty (30) days during the fishing season or any combination of the above.

(2) *2nd Violation of the Regulations of this Part.* Not more than \$400 or four (4) months in jail or suffer suspension of tribal fishing rights for sixty (60) days during the fishing season or any combination of the above.

(3) *3rd or Subsequent Violations of the Regulations of this Part.* Not more than \$500 or six (6) months in jail or suffer suspension of tribal fishing rights for ninety (90) days during the fishing season or any combination of the above.

(b) Any eligible Indian who violates §§ 258.8 (b), (c), or (d), or 258.9, shall be fined not more than \$500 or sentenced to jail for a period not to exceed six (6) months or both.

(c) Any eligible Indian who violates § 258.7 of this Part shall be fined not more than \$250 or suffer suspension of tribal fishing rights for up to ninety (90) days during the fishing season or both.

(d) Any eligible Indian who violates § 258.12(a) of this Part shall be fined not more than \$250 or suffer suspension of tribal fishing rights for up to ninety (90) days or both.

(e) Any eligible Indian who refuses to obey a lawful order of the Court of Indian Offenses (including an order suspending fishing rights) shall be fined not more than \$100 or sentenced to jail for a period not to exceed thirty (30) days or both.

(f) Any eligible Indian who violates § 258.6(a) shall be fined not more than \$100 or sentenced to jail for a period not to exceed thirty (30) days or both.

(g) Where appropriate the judge, in his or her discretion, may order an eligible Indian, in lieu of a jail sentence, to work up to twenty hours a week without compensation for a term to correspond to the probable term of a jail sentence, in fisheries enhancement work on the Reservation. Such work will be conducted under the supervision of the BIA or the Fish and Wildlife Service.

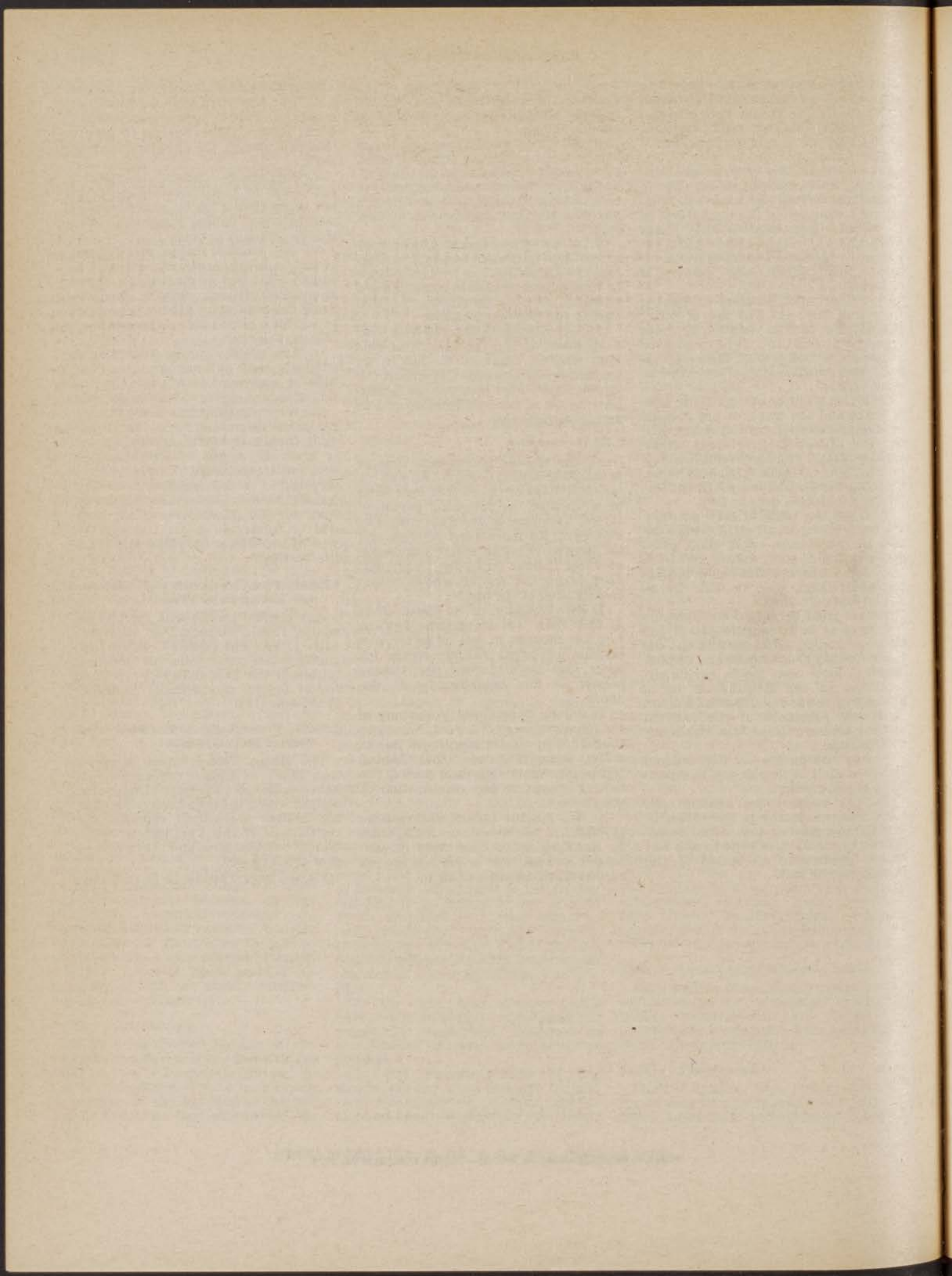
§ 258.16 Forceable Assault and Impeding a Law Enforcement Officer.

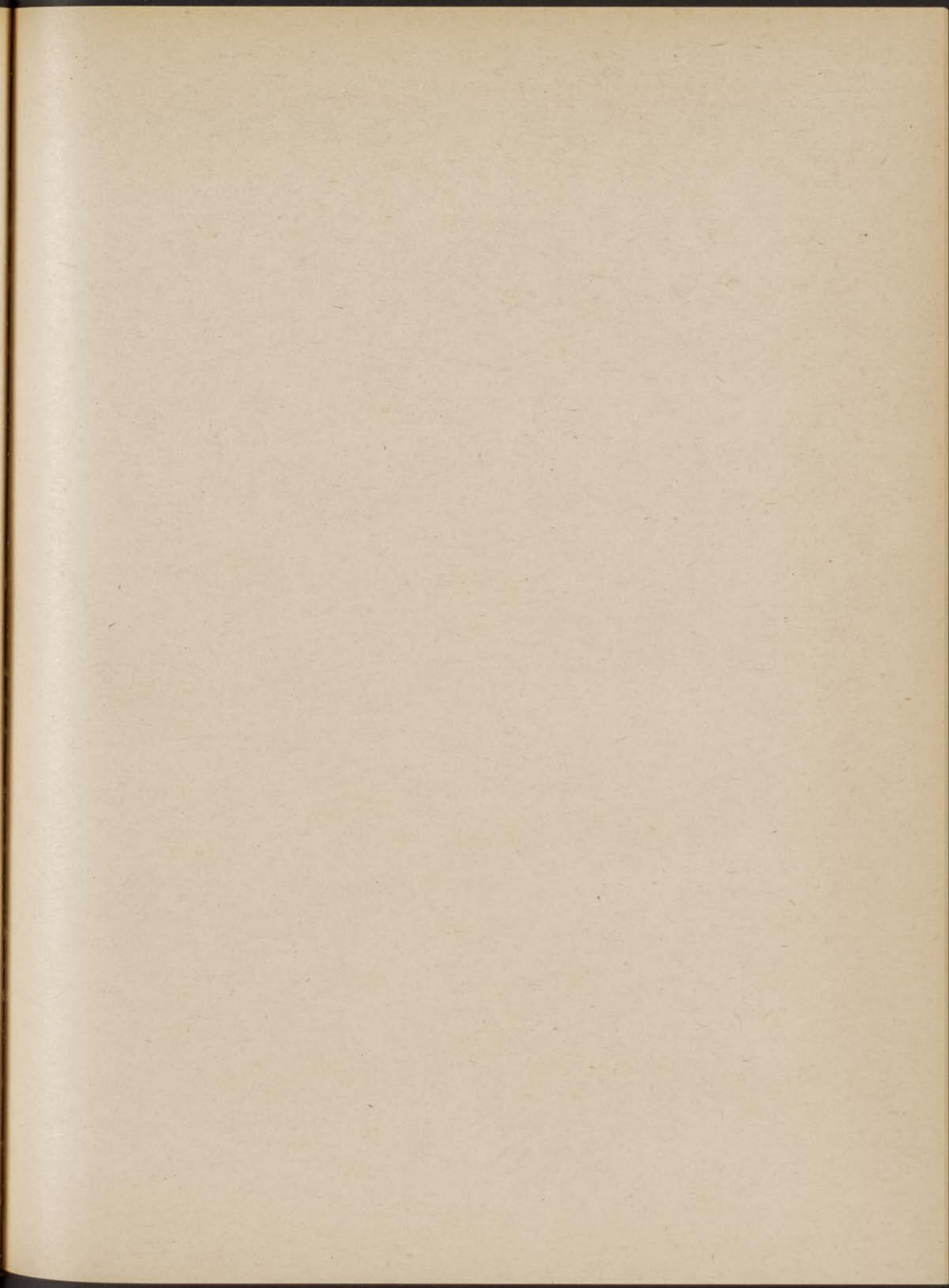
Any eligible Indian who forcibly assaults, resists, impedes, or interferes with a law enforcement officer engaged in the enforcement of the regulations of this Part shall be prosecuted in the federal courts under 18 U.S.C. §§ 111 and 1114.

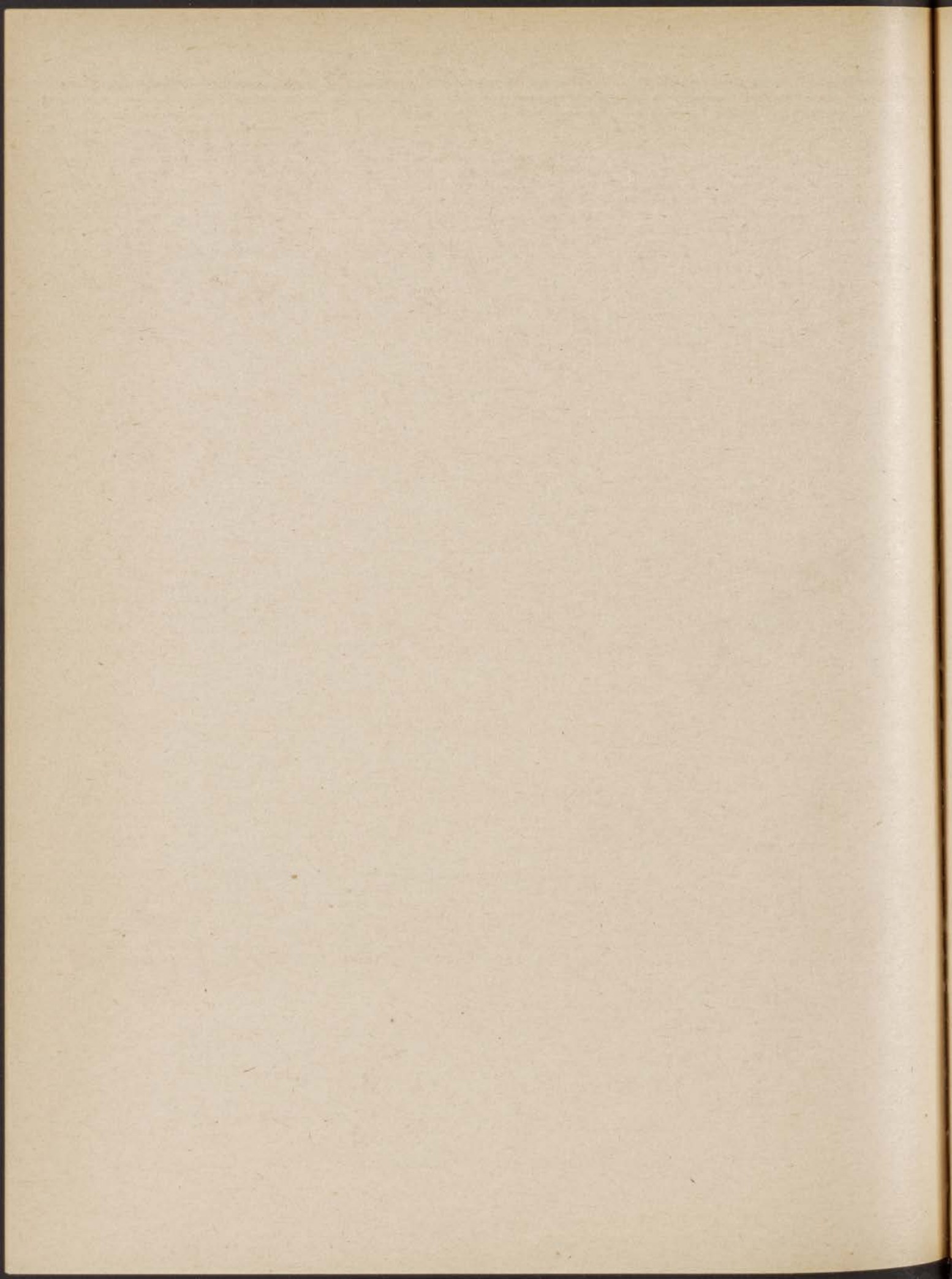
§ 258.17 Hoopa Valley Indian Reservation Court of Indian Offenses.

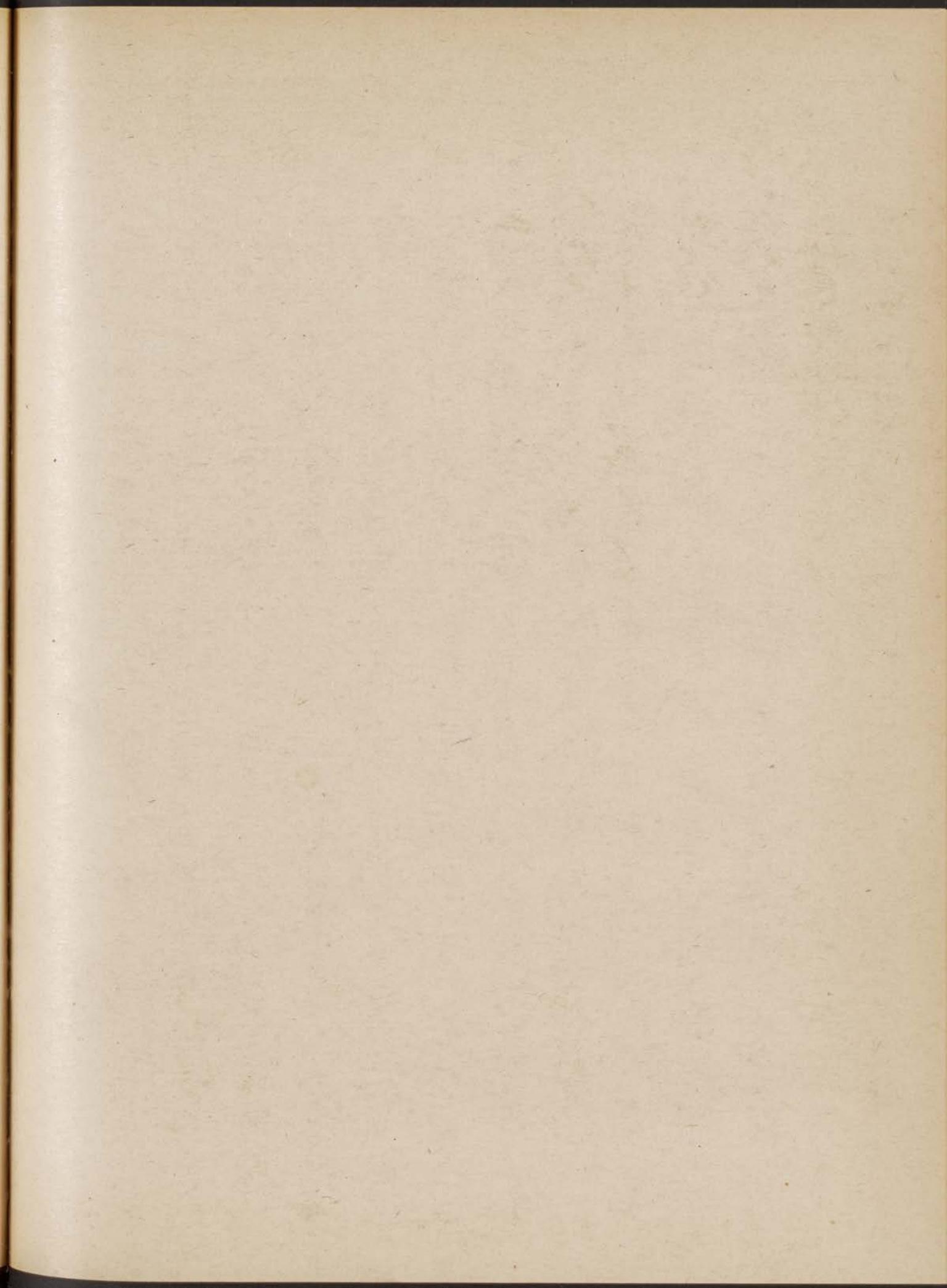
The Hoopa Valley Indian Reservation Court of Indian Offenses established under 25 CFR Part 11 has jurisdiction which is limited to trying eligible Indians accused of violating the regulations of this Part and to determining whether nets and other fishing gear are forfeited.

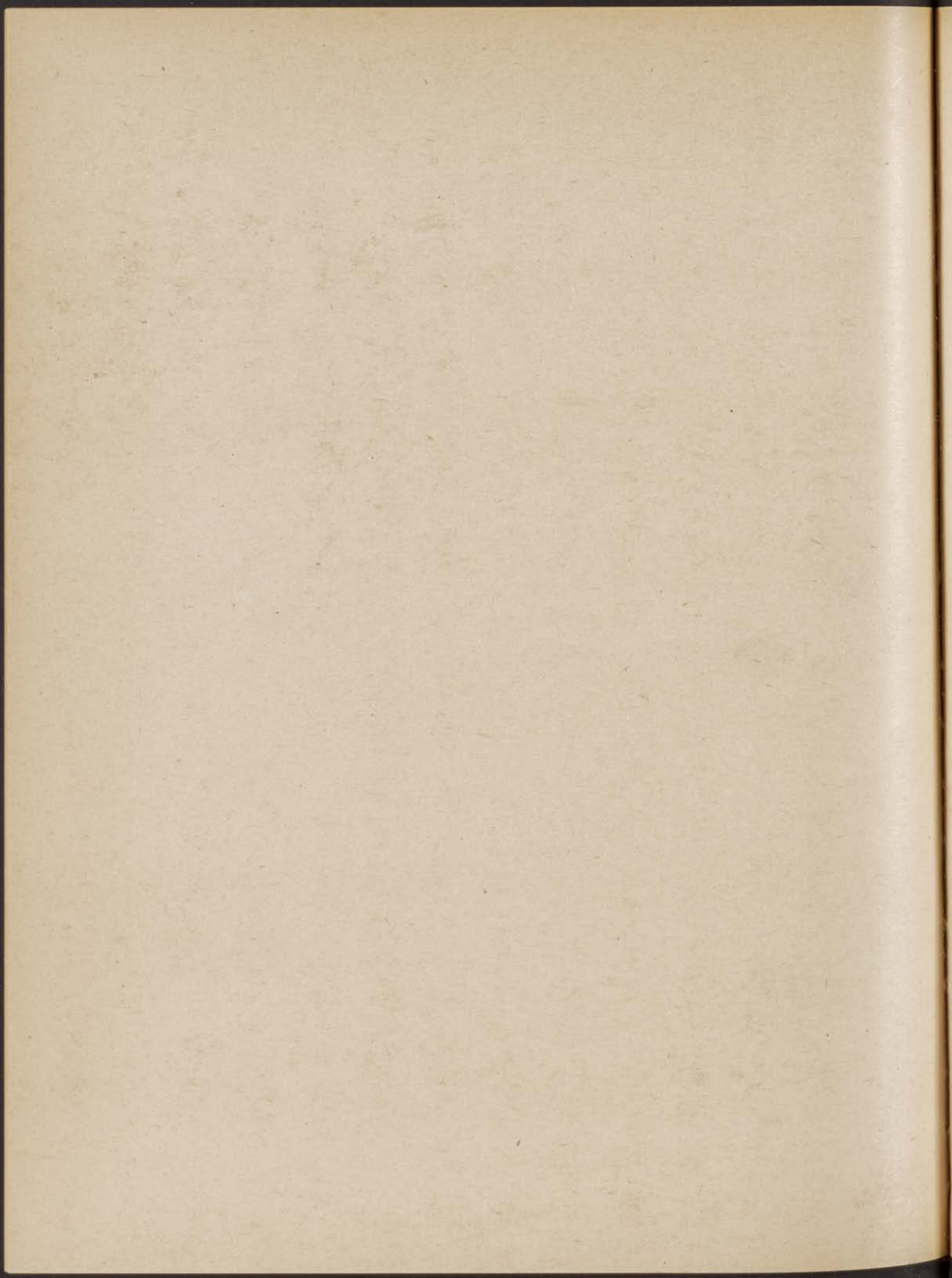
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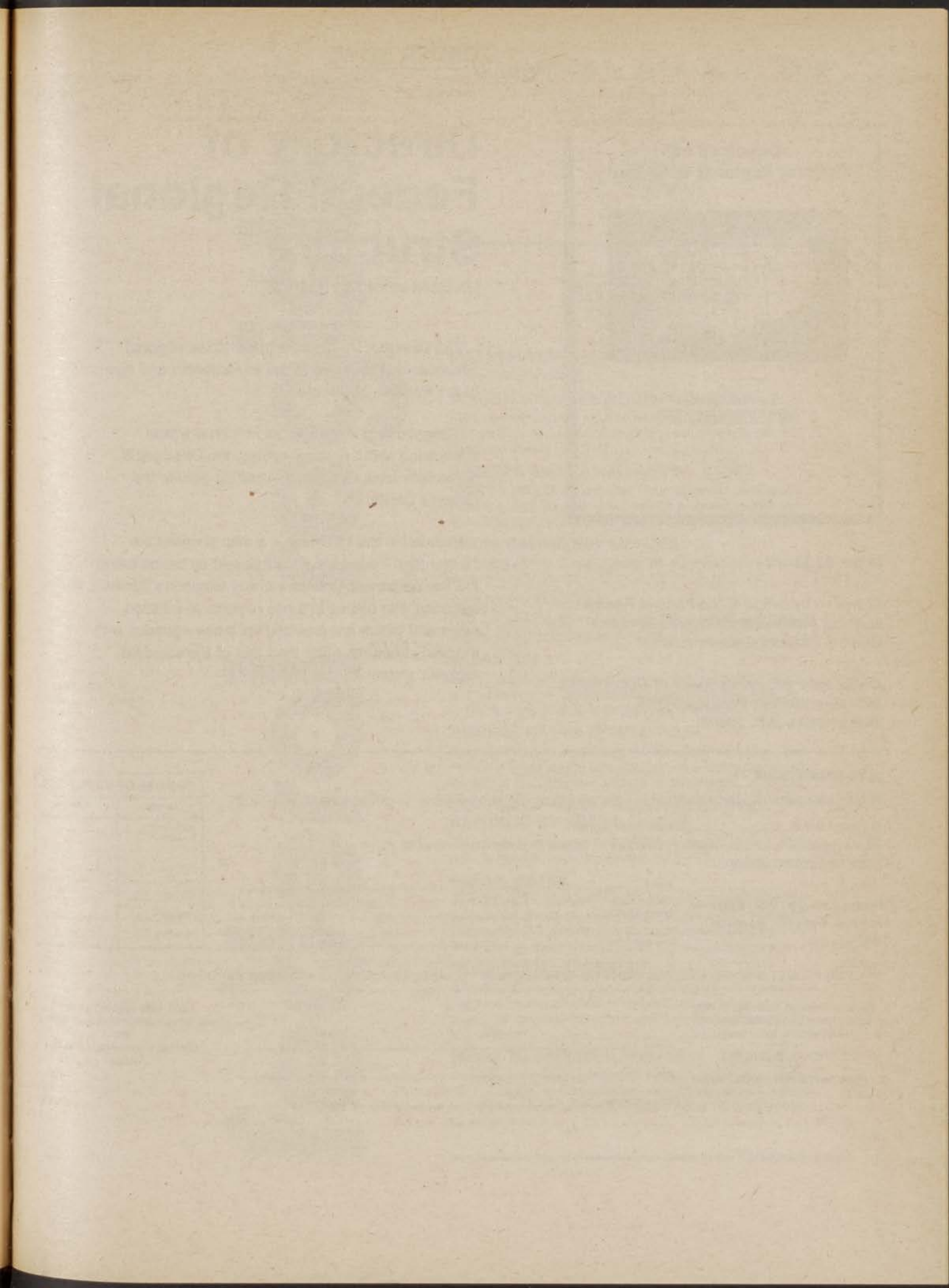












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